

DCUSA CHANGE REPORT	
CHANGE PROPOSAL	DCP 046 – Common Distribution Charging Methodology Governance
DATE OF ISSUE	11 November 2009
ISSUED TO	DCUSA Contract Managers
PARTIES ENTITLED TO VOTE	All Parties
RETURN DEADLINE (Voting End Date)	18 November 2009 – DCUSA@electralink.co.uk

1 PURPOSE

- 1.1 This document is issued in accordance with Clause 11.20 of the DCUSA. The Change Report details DCP 046 – Common Distribution Charging Methodology Governance. 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.
- 1.2 Two variations are issued for voting – DCP 046A and DCP 046B. Throughout this document references to DCP 046A refer to the document issued as Appendix A in the consultation and references to DCP 046B refer to the document issued as version B in the consultation.
- 1.3 Parties are invited to consider the proposed amendments attached as Appendix A and Appendix B and submit votes using the form attached as Appendix E to dcusa@electralink.co.uk by 18 November 2009.

2 INTENT OF DCP 046 – COMMON DISTRIBUTION CHARGING METHODOLOGY GOVERNANCE

- 2.1 With effect from 01 October 2009, licence modifications requiring the governance of the distribution charging methodologies to be placed in the DCUSA have been approved by Ofgem¹. DCP 046 seeks to prepare the DCUSA such that the Agreement sets out the governance arrangements to reflect the requirements of the final licence modification, with the methodologies being introduced into the DCUSA at a later stage.
- 2.2 DCP 046 was considered by the DCUSA Panel at its meeting on 28 August 2009. The Panel determined that the CP is an urgent Part One change and recommended its progression through the Definition Procedure to allow a Working Group to assess and develop the drafting.
- 2.3 The DCP 046 Working Group comprised representatives from supplier and distributor parties as well as Ofgem and the DCUSA legal advisors, Wragge & Co. The DCP 046 Working Group has met on 3 occasions and minutes and papers of the DCP 046 Working Group meetings are available on the [DCUSA Website](#).

3 DCP 046 – WORKING GROUP CONSIDERATIONS

- 3.1 The Common Methodology Group Work Stream 5 initially developed the drafting amendments to the DCUSA. DCP 046 has been raised to introduce such drafting into the DCUSA. The DCP 046 Working Group has been tasked by the Panel with reviewing this drafting to ensure that it reflects the proposed Licence modifications and aligns with DCUSA processes.
- 3.2 The development of the proposed legal drafting for the Change Proposal has evolved through a number of versions following consideration by the Working Group. The Working Group developed two variations which were issued to all Parties for consultation on 13 October 2009. These two versions were developed from the legal text originally included with the Change Proposal. Appendix C sets out the progression from the Original Change Proposal text to the two variations.

¹ [Ofgem Notice - Licence Modifications](#)

- 3.3 The only difference between DCP 046A and DCP 046B is the proposed drafting of clause 13.10.
- 3.4 The Authority has raised concerns regarding DCP 046A. Under DCP 046A the Authority's decision would apply to the recommendation of the DCUSA Parties (i.e. to the outcome of the DCUSA voting mechanism). Retention of its veto/non-veto approach to decisions not with-standing, the Authority considers that it would be appropriate that the decision making mechanism applying to charging proposals under the DCUSA should be as similar to the decision making mechanism applying to non-charging DCUSA proposals as possible.
- 3.5 The Authority therefore considers that it would be appropriate for the veto to apply to the Change Proposal itself, so that (regardless of how the DCUSA Parties vote) the modification set out in the Change Proposal will be made unless the Authority exercises its right of veto. This requirement is reflected in the drafting for DCP 046B.

4 CONSULTATION RESPONSES

- 4.1 The DCP 046 consultation was issued to all DCUSA Parties, DCMF members, Ofgem, Consumer Focus and materially impacted interested parties on 13 October for a period of 15 Working Days. 11 responses were received.
- 4.2 Responses to the consultation are summarised below. The Working Groups' consideration of the responses is set out in Section 5.

Do you understand the intent of DCP 046 and are you supportive of its principles?

- 4.3 100% of respondents confirmed that they understood the intent of the CP and are supportive of its principles.

Do you consider that the proposal better facilitates or is detrimental to the DCUSA objectives? Does this apply equally to DCP 046A and DCP 046B?

- 4.4 Respondents indicated that the same DCUSA objectives, indicated in the table below, are impacted by both versions.

DCUSA Objective	Better Facilitated	Detrimental Effect
The development, maintenance and operation by each of the DNO Parties and IDNO Parties of an efficient, co-ordinated, and economical Distribution System.	4	0
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.	8	0
The efficient discharge by each of the DNO Parties and IDNO Parties of the obligations imposed upon them by their Distribution Licences	10	1 ²
The promotion of efficiency in the implementation and administration of this Agreement and the arrangements under it.	1 ³	0

Which drafting alternative do you consider is more appropriate?

4.5 8 respondents indicated that they considered DCP 046A to be more appropriate, 2 respondents indicated that DCP 046B is more appropriate and 1 respondent, Electricity North West Limited, indicated that neither are appropriate and proposed an alternative solution (see section 4.11 below).

4.6 Respondents identified the benefits of DCP 046A as follows:

- Clearer governance structure
- Certainty of ability to appeal and clarity of appeals mechanism
- Greater discretion to parties and party view represented

4.7 Respondents identified the benefits of DCP 046B as follows:

- Better fits Licence conditions

² This comment was made with specific reference to the requirement for a periodic review of the CDCM

³ This comment was withdrawn following Working Group discussions

Do you consider that the proposed DCUSA drafting effectively discharges the obligations introduced through the licence modifications?

- 4.8 6 Parties indicated that the proposed DCUSA drafting effectively discharges the obligations introduced through the licence modifications. Electricity North West Limited, indicated that the drafting does 'not entirely' discharge the obligations and proposed an alternative solution (see section 4.11 below).
- 4.9 IPNL noted that the drafting does not specify a mechanism for carrying out an annual review of the charging methodologies and recommended that this should be defined. CE Electric UK also noted that the drafting does not specify a mechanism but noted that 'DNOs will need to bring forward their own proposals'. Scottish Power Distribution highlighted that the requirement to consult with stakeholders needs to be better captured in the drafting.

Are there any alternative solutions or matters that should be considered by the Working Group?

- 4.10 IPNL recommended that the Working Group should consider making the DCUSA panel responsible for co-ordinating the annual review of the CDCM as well as co-ordinating the discussions with affected parties. CE Electric noted that version control for the methodology will need to be maintained as is currently the case with the DCUSA document.
- 4.11 Electricity North West Limited proposed that an alternative variation set around the following principles should be taken forward:
- The periodic review should be placed in DCUSA be it a Panel responsibility or a DNO responsibility;
 - Any submission that does not meet our licence requirements should not be submitted for approval;
 - Any other person who is materially impacted should be able to put forward a change request without going via the Authority;
 - All Change Proposals which have the support of greater than 50% of the parties in any of the voting Party Categories will go forward to Ofgem for decision;
 - Should 50% acceptance in any one category not be achieved it should not be submitted to the Authority;
 - Only 'a recommended' change proposal (and not alternative proposals) should be submitted; and
 - Any rejected change should be subject to appeal.

Are you supportive of the proposed implementation date of '10WD following Authority consent or 01 January 2010, which ever occurs later'?

- 4.12 All respondents confirmed that they are supportive of the proposed implementation date with 2 noting that implementation of DCP 046 must also take account of the implementation of the CDCM into DCUSA on 01 April 2010.

Please state any other comments or views on the Change Proposal

- 4.13 CE Electric UK considered that Ofgem should attend any Working Group established to consider a CDCM Change Proposal. It was CE Electric UK's view that such presence may provide a level of reassurance to working group members about any potential ramifications with regard to competition law.
- 4.14 Electricity North West Limited recommended that the DCUSA drafting should state that any changes to the methodology will include a 'common' change to the 'charging model' to ensure changes do not result in 14 different versions of the model based on differing interpretations of the statement. Electricity North West Limited further recommended that drafting should specify the implementation of CDCM changes to align with the two dates associated with tariff rate changes.

5 WORKING GROUP CONCLUSIONS

- 5.1 The Working Group concluded that it is supportive of the intent of DCP 046.

DCP 046A and DCP 046B better facilitate the relevant DCUSA Objectives

- 5.2 The Working Group concluded that both variations of DCP 046 better facilitate the following DCUSA Objectives:
- 5.3 Objective 1 - Implementing open governance arrangements with the industry for the CDCM will bring forward more robust charging methodologies leading to more economical development of the networks.
- 5.4 Objective 2 - The ability of DCUSA Parties to propose changes to charging methodologies will facilitate competition in each of the relevant categories. Open governance arrangements will ensure that competition issues can be addressed by respondents in an open manner.
- 5.5 Objective 3 – DCP 046 facilitates the new Licence requirements that places the governance of distribution charging methodologies into DCUSA and appears to be the most efficient method of discharging the open-governance obligation for industry participants.
- 5.6 The Working Group considered each of the comments made by Parties in support of DCP 046A and DCP 046B and concluded the following:

DCP 046A does not offer a clearer governance structure than DCP 046B.

- 5.7 The Working Group considered that respondents favoured this option considering it to be similar to their understanding of the existing DCUSA process and thus more familiar. The Working Group concluded that versions

A and B are equal in terms of clarity of governance structure but that one may be more familiar to DCUSA Parties.

DCP 046A does offer a greater certainty of ability to appeal and clarity of appeals mechanism than DCP 046B

5.8 The following table demonstrates the progression of a CP through the voting, Ofgem decision and appeals process under DCP 046A and DCP 046B.

Option	Party Recommendation	Ofgem Decision	Outcome	Appealable?	Comments
DCP 046A - Decision on Parties' recommendation	Implement	Veto	Not implemented	Yes	
		Non Veto	Implemented	No	Agreed with recommendation
	Not Implement	Veto	Implemented	Yes	
		Non Veto	Not Implemented	No	Agreed with recommendation
DCP 046B - Decision on Change Proposal	Implement	Veto	Not implemented	Yes	
		Non Veto	Implemented	No	Agreed with recommendation
	Not Implement	Veto	Not Implemented	No	Agreed with recommendation
		Non Veto	Implemented	Yes / ?	Disagree with recommendation but has there been a decision?

5.9 The Working Group noted the concern amongst respondents relates to the final scenario - where Ofgem chooses not to veto a change proposal that was not supported by the recommendation of the DCUSA parties. In such circumstances, there should be a right of appeal, but such appeal may fail on a technicality if it is held that Ofgem's non-veto did not amount to a decision.

5.10 The Working Group concluded that this represents a relatively low risk. However it is not a risk that applies to the approach proposed in Appendix A. Ofgem re-affirmed that its intent and interpretation is that its non-veto can be appealed in these circumstances. The Working Group re-affirmed its hope that DECC could be persuaded to clarify the legislation in respect of this point. The Working Group further noted that the ability to rectify mistakes through subsequent Change Proposals exists separately from the Appeals mechanism.

DCP 046A does not offer greater discretion to parties and party views are not better represented under this variation.

5.11 The Working Group noted that principle concern again relates to whether Ofgem's decision on a CP should be made on the parties' recommendation rather than the Change Proposal and the implications this has for any appeal. The Working Group noted that Ofgem will have sight of the Party recommendations under both variations and that its final decision is based on a wider set of criteria than the Parties' recommendation. The Working

Group noted that it is more explicit that the Parties' views will be considered under DCP 046A than DCP 046B but did not conclude that the difference was material.

DCP 046B Better fits Licence conditions than DCP 046A

- 5.12 The Working Group agreed that both sets of drafting are fit for purpose. However it concluded that DCP 046B is drafted in a manner that more explicitly reflects the Licence conditions.
- 5.13 The Working Group considered the alternative solution proposed by Electricity North West Limited and concluded:

Inclusion of Charging Methodology Periodic Review within the DCUSA

5.14 The Working Group concluded the Licence does not require the periodic review to be captured in the DCUSA. It agreed that the Panel can create a 'vehicle' through which Distributors can discharge their Licence obligation but that the obligation should remain with the DNOs. The Working Group noted that no change is required to the DCUSA to facilitate this as the Panel has the authority to establish Working Groups. The Working Group noted that DCMF is looking at amending its terms of reference to facilitate the review and that the DCUSA Panel will participate in any resulting discussions.

Any submission that does not meet the Licence requirements should not be submitted for approval

5.15 The Working Group concluded that the DCUSA should not 'filter' Change Proposals and that all CPs should go through due process and have equal right to be viewed by Ofgem.

Any other person who is materially impacted should be able to put forward a change request without going via the Authority

5.16 The Working Group concluded that the preferred position is for Ofgem to protect and designate materially impacted Parties. Both Ofgem and DCUSA Legal Counsel confirmed that the DCP 046A and DCP 046B drafting discharges DNO obligations in this regard.

Only 'a recommended' change proposal (and not alternative proposals) should be submitted

5.17 The Working Group concluded that whilst a single, supported, proposal is preferable it cannot be mandated. The Working Group noted that the implicit filtering of variations is not supported by Ofgem and that attempts to limit the number of variations being put forward is less efficient and might result in more CPs being raised. The group further noted that the DCUSA limits the number of alternative variations that can be put forward for decision along with the original Change Proposal to two.

Panel should not be able to determine who is eligible to vote

5.18 The Working Group concluded that the Panel should maintain its ability to determine the categories of Parties entitled to vote on a CP.

Should 50% acceptance in any one category not be achieved it should not be submitted to the Authority:

5.19 The Working Group concluded by allowing a CP to be recommended as 'accepted' when it is only supported in one of the three voting categories this proposal focuses too much power in one group. The Working Group concluded that the proposal removes the incentive to reach consensus position. The proposal increases the chances of implementation for a CP and restricts the route of appeal.

Requirement for Ofgem to issue a formal non veto response

5.20 The Working Group concluded that whilst desirable the issue of a non veto response is a matter for Ofgem to determine through the Licence obligation, and that the Working Group cannot take any action in this

regard. The Working Group expressed strong support for this option but concluded that it is not achievable under the current Licence drafting.

- 5.21 The Working Group considered the additional comments provided by consultation respondents and concluded:

Implementation

- 5.22 The Working Group concluded that the implementation date as set out in the CP is appropriate and in line with Ofgem's requirements.

Ofgem attendance at CDCM Working Group Meetings

- 5.23 The Working Group agreed that this condition cannot be mandated but noted that as standard practice Ofgem will be invited to all CDCM meetings and that such meetings will be conducted publicly and formally minuted.

Maintenance of CDCM Model

- 5.24 The Working Group agreed that a change to the CDCM model is an integral part of a change to the Charging Methodology and concluded that the drafting of DCP 046A and DCP 046B should be amended to mandate that a baseline model be maintained under the DCUSA.

Timescales for Implementation of CDCM Change Proposals

- 5.25 The Working Group agreed that further consideration is required regarding the implementation timescales for CDCM Change Proposals and recommended that a Panel guideline should be drafted to support the process.

6 WORKING GROUP RECOMMENDATION

The Working Group agreed by majority to put forward DCP 046B as its recommended variation. It concluded that whilst there was common support for DCP 046A amongst consultation responses, DCP 046B better reflects both the Licence and Ofgem's requirements and therefore better facilitates DCUSA Objective 3 than DCP 046A. The main difference between the two variations is the ability to appeal, and the shortcomings of DCP 046B can be solved outside of the DCUSA drafting.

- 6.1 In accordance with Clause 11.18 of the DCUSA, CE Electric UK requested DCP 046A also be put forward for voting given the level of support expressed in the consultation responses.
- 6.2 The Working Group recommended that the Change Report should be issued to all Parties for 5 Working Days.

7 PROPOSED AMENDMENT AND LEGAL DRAFTING

- 7.1 The proposed legal drafting of DCP 046A and DCP 046B has been reviewed by Wragge and Co.

8 PANEL RECOMMENDATION

- 8.1 The Panel approved the DCP 046 Change Report on 10 November 2009. The Panel supported the conclusions reached by the DCP 046 Working Group.
- 8.2 In accordance with Clause 12.4 of the DCUSA the Panel has determined that DCP 046 should be issued to all Parties for voting for a period of 5 Working Days.
- 8.3 The Panel has directed that Parties may vote to accept one variation and reject the other, or to reject both variations. The timetable for the progression of the Change Proposal is set out below:

ACTIVITY	DATE
Party Voting	11 November – 18 November
Change Declaration	19 November 2009
Authority Consent	24 December 2009
Implementation	01 January 2010 / 10 WD following Authority Consent

Appendices:

- A. DCP 046A
- B. DCP 046B
- C. Explanation of progression from original Change Proposal text to the two variations
- D. Consultation Responses
- E. Voting Form