DCUSA CHANGE REPORT	
CHANGE PROPOSAL	DCP 040 - Part 2A Change to clarify number and timing of changes to charges to Suppliers
DATE OF ISSUE	23 March 2009
ISSUED TO	DCUSA Contract Managers
PARTIES ENTITLED TO VOTE	All Parties
RETURN DEADLINE (Voting End Date)	14 April 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 040 'Part 2A Change to clarify number and timing of changes to charges to Suppliers'. The voting process for the proposed variation and the timetable of the progression of the CP through the DCUSA Change Control Process is set out in this document.

1.2 Parties are invited to consider the proposed legal drafting attached as Appendix B and submit votes using the form attached as Appendix C to dcusa@electralink.co.uk by 14 April 2009.

2 BACKGROUND

2.1 DCP 040 was raised on 04 February 2009 and submitted to the Panel on 18 February 2009. DCP 040 was assessed as standard change and the Panel determined that it should be entered into the Assessment Phase and progressed directly through to the Report Phase. The CP impacts Part 1 Matters and is subject to Authority Consent.

3 SUMMARY OF DCP 040

3.1 DCP 040 has been raised by EDF Energy Networks Limited. The CP seeks to clarify the drafting of Clause 19.1 to make it clear that Distributors may, after making reasonable endeavours not to, make more than two price changes per year and/or may make price changes on dates other than 1 April or 1 October. The intent is also to ensure consistency with the relevant wording of Clause 43.1 as changed by DCP 039.

4 BACKGROUND

4.1 DCP 001 - 'Proposed move to annual amendment of DUoS Charges' was raised in November 2006. The CP sought to limit variations to Use of

System (UoS) charges amendments on best endeavours once a year basis, with charges to apply with a 1st October start.

4.2 The DCP 001 Working Group assessed the CP and developed a more flexible alternative variation DCP 001A which allows the Company to "use reasonable endeavours not to change prices more than 2 times per year such changes being effective from 01 April and 01 October". This variation was implemented in November 2007.

4.3 It was considered by the DCP 001 Working Group and the Proposer of DCP 001A that the intent of the drafting was for Parties to use reasonable endeavours not to change prices more that 2 times per year and reasonable endeavours for the changes to become effective on 01 April and 01 October. Advice from the DCUSA Legal Advisors has confirmed that as drafted both Clauses 19.1 and 43.1 allow alternative implementation dates to 1st April or the 1st October.

4.4 However at the IDNO / DNO Meeting 9 in January 2009, Ofgem indicated that its legal team considered that there were 2 possible interpretations of the Clauses as drafted. Ofgem advised the group that it 'reasonable endeavours' could be interpreted either to relate to the numbers of charge changes implemented or that it related to the date on which they are implemented. The minutes from meeting 09 state "*Ofgem outlined that its legal team considered that a strict reading of the DCUSA would state that the 1st interpretation was correct. However, they stated that there was sufficient doubt for a 2nd interpretation, which was understood to be the original intent of the drafting to be formed… The advice was that the DCUSA clause should be re-drafted if the intention of the drafting was the 2nd interpretation"*.

4.5 DCP 039 'Part 2B - Change to notice period provisions for changes to charges to IDNOs' was therefore drafted as an urgent CP to allow DUoS charges for IDNOs to be implemented in May 2009. DCP 040 has subsequently been raised to clarify the drafting as recommended by Ofgem and align Clause 19.1 with Clause 43.1. The CP seeks only to clarify the intent of the drafting and does not mandate or propose amendments to existing processes.

5 PANEL CONCLUSIONS

5.1 The Panel considered that DCP 040 should progressed as a Part 1 matter in accordance with Clause 9.5 of the Agreement as it is impacts Clause 19.1 – Charges.

5.2 The Panel agreed that the CP should be entered directly into the Report Phase noting that the intent of the drafting has been widely discussed as part of the discussions on DCP 039. The Panel noted that the CP seeks only to clarify the drafting and that there were no alternative proposals to be considered.

5.3 The Panel agreed with the view of the Proposer that the Change Proposal will better facilitate DCUSA Objective 2 and 3 of the DCUSA as set out in the Change Proposal (Appendix A).

5.4 The Panel considered that DCP 040 impacts all Parties and agreed that the CP should be issued for a voting period of 15 Working Days.

5.5 The content of the Change Report was approved by the Panel on 18 March 2009.

6 PROPOSED AMENDMENT AND LEGAL DRAFTING

6.1 The proposed legal drafting for DCP 040 is set out in Appendix B.

7 TIMETABLE

7.1 In accordance with Clause 12.4 of the DCUSA the Panel has determined a 15 Working Day voting period.

7.2 The timetable for the progression of the Change Proposal is set out below:

ACTIVITY	DATE
Party Voting	23 March – 14 April
Change Declaration	15 April
Authority Consent	21 May 2009
Implementation	25 June 2009

Appendices:

A. DCP 040 v1.0

B. DCP 040 – Legal Drafting

C. DCP 040 - Voting Form