

Minutes

Meeting Name	DCP 012 Working Group	Meeting Number	001
Meeting Date	06 December 2007	Meeting Time	10.00
Venue	MWB Business Exchange Centre, Victoria, London		

Attendee

Glenn Sheern (Chair)
 Craig Neill
 Dipen Gadhia
 Donna Townsend
 Gary Marshall
 Gemma Coles
 John Lawton (Teleconference)
 Matthew Collinson
 Mike Harding
 Nicholas Rubin
 Nigel Birchley
 Peter Waymont
 Elizabeth Lawlor (Secretary)

Representing

E.ON UK
 SSE Distribution
 Ofgem
 Laing O'Rourke
 CE Electric
 IPNL
 United Utilities Electricity Ltd
 IPNL
 Electricity Network Company
 Ofgem
 Central Networks
 EDF Energy (Distribution)
 DCUSA Limited

1 ADMINISTRATION

- 1.1 The Working Group appointed Glenn Sheern as its chair.
- 1.2 The Working Group reviewed and agreed its Terms of Reference and asked EL to update the membership section.

2 DCP 012 - INTRODUCTION OF CONTRACTUAL ARRANGEMENTS FOR THE PROVISION OF USE OF SYSTEM BETWEEN ONE DISTRIBUTOR AND ANOTHER DISTRIBUTOR

- 2.1 MH informed the group that DCP 012 had been raised to bring the development of the Section 2B Project Group into the formal DCUSA change process. Members noted that the Panel had recommended that the group focus on any existing issues rather than consider new issues as far as possible. PW was supportive of that position noting that EDF Energy Networks believed that Section 2B should comprise the current connection statement and maintain the status quo. GS reminded members that they were acting as industry experts rather than representing their own organisations and as such should work to reach a compromise on the best solution. GS noted that once Section 2B is implemented Parties will be able to raise subsequent CPs to amend specific elements if necessary.
- 2.2 NR noted the position of the group but recommended that members should discuss significant issues and debate them as widely as possible. MH suggested that the main aim of the group is to agree a model to go forward for development and that the only outstanding area of debate was the development of Clause 52.9. MH noted that the Project Group had given ground and found a compromise position on a number of issues to allow the agreement to take effect and move forward. MH asked that Ofgem note the steps taken by all Parties to agree the drafting to date and recognised that

further changes may arise that will need wider discussion. The group accepted NR's views but noted that it did not want to open up the same issues and repeat the significant amounts of work carried out to date.

3 CLAUSE 52.9 – MODIFICATIONS PROPOSED BY THE COMPANY

- 3.1 MH noted that the Section 2B Project Group had been unable to reach agreement on the drafting of Clause 52.9. MH noted that ideally a single variation would be presented for to Parties for voting and asked members to consider whether the drafting could accommodate a single solution. The group noted that at its meeting on 09 November the Section 2B Project Group had reached a compromise position but that at the meeting on 19 November members' views became disparate and two options had been drafted. Option 1 stated that the Company would have no obligation to compensate the user for any costs or expense resulting from modifications it made. Option 2 stated that the Company would be liable to compensate the User for any modifications which alter the technical characteristics its Connection Point.
- 3.2 GS asked the group whether it wished to consult specifically on each variation and then evaluate each against the objectives or whether it could reach an agreement.
- 3.3 MH noted that he preferred Option 2 of the drafting for Clause 52.9 as he considered that it better facilitated was Objective 3.1.1¹ by putting the onus on DNOs to be clear when raising modifications that the costs are efficient and economical to the 'total system'. MH considered that if the Company bringing forth the modification was liable to pay the costs it would be more likely to be focused on raising the change in an efficient manner. MH noted that although this is a change to the existing position the current structure is not suitable for the current framework where DNO – IDNO relationships have wider impacts and should be treated differently.
- 3.4 NB noted that although Option 1 appears in all DNO agreements at present the reality of the situation was that any modifications would be negotiated between Parties. NB therefore indicated that Central Networks would accept a third option of a 'compromise' position where by the Company would be liable to pay costs for any modification that was not the result of a legislative or enforced change. DT confirmed that Laing O'Rourke was also supportive of the compromise option noting that IDNOs could better manage the risks to their business if Companies were obliged to pay the costs for modifications but accepting that legislative changes were likely to apply equally to all Distributors.
- 3.5 The group agreed that the newly proposed option was far closer to the original intention of the clause. JL recognised that the group will need to consider the definition of "technical specification" and to confirm that DNOs will only compensate IDNOs if the action it takes changes the technical characteristics of its equipment through the action taken by the DNO and not because the IDNO did not have suitable equipment in place in the first instance.
- 3.6 The group further considered the ability to recover third party costs and whether the solution would work for both upstream and downstream

¹ The development, maintenance and operation by the DNO Parties and IDNO Parties of efficient, co-ordinated, and economical Distribution Networks

modifications. The group determined that this was outside the scope of Section 2B but that drafting in other agreements captures the issue of third party costs. Members considered that the issue could be captured in the consultation if appropriate.

- 3.7 MC put forward a revised version of Clause 52.9 based on the compromise position put forward by the group: *"Where a Modification by the Company alters the technical characteristics of the Connection Point (as set out in the relevant Bilateral Connection Agreement), but not otherwise, the Company shall compensate the User for the reasonable cost and expense of any modification required to be made by the User as a result of such Modification provided that the Company shall not be obliged to compensate the User where such Modification is required as a consequence of any Relevant Instrument, legislative requirement or Directive. Any dispute as to whether to Company is obliged to compensate the User or as to the amount of any such compensation may be referred to arbitration in accordance with the provisions of Clause 58"*.
- 3.8 Members agreed that they were satisfied with the revisions and agreed to put the drafting out as part of the consultation. MH confirmed that he was willing to accept the amendment to DCP 012 and that an alternative variation was not required.

4 EVALUATION AGAINST THE DCUSA OBJECTIVES

- 4.1 DG reminded members that a key objective of the group is to evaluate and rationalise the Change Proposal against the DCUSA Objectives. DG noted that the Authority will base its decision on that rationale and whether the CP as a whole better facilitates the relevant objectives.
- 4.2 MH proposed that Section 2B as a whole better facilitates DCUSA Objectives 3.1.1, 3.1.2 and 3.1.3 because it puts the agreement terms in the public domain, aiding transparency and efficiency to industry participants which aids competition. MH noted that if the arrangements are maintained within the DCUSA they can be more easily be updated and developed and that change can be more easily negotiated in one agreement than in a series of disparate contracts.
- 4.3 MH noted that the DCUSA governance framework provides a robust platform for the debate of change and noted that the drafting provides a good step forward from the current arrangements and the opportunity for making collective changes to collective issues. The working group agreed with MH's assessment and agreed to seek the option of the wider community as part of the consultation.

5 REVISIONS FOLLOWING THE AUGUST CONSULTATION

- 5.1 The group noted that there had been a number of drafting corrections to the original document that was sent out for consultation and agreed to consider each one so it could be highlighted to Parties in the DCP 012 consultation document.
- 5.1.1 Clause 36.6 - Disputes provisions – revised to include the option to by pass arbitration and go to legal review / the Authority. This was incorporated because the distributor to distributor is a relationship between two potential competing parties. It was therefore felt that arbitration may not always be the appropriate route.

- 5.1.2 Clause 38 – Bilateral Connection Agreements (BCAs) – The revised drafting makes provision for pre-existing connections and introduces the requirement to make sure there is some kind of agreement (BCA) in place for all existing connections. The approach mirrors similar arrangements in supply 'deemed contracts'.
- 5.1.3 Clause 38.7 – A breach of a BCA is now not a breach of the DCUSA. This change was made in light of consultation responses. Under section 16 of the Act Parties have an obligation to provide a connection. It was considered that granting the right to refuse to provide a connection to one network because of a breach by a Party in respect of a connection to another network was in conflict with this obligation.
- 5.1.4 Clause 39.1 - This Clause has been revised after comments received in consultation to refer to the User's rights for connection and energisation. The right to remain connected and energised is covered implicitly (e.g. the Company is only entitled to de-energise under prescribed circumstances covered under Clause 41).
- 5.1.5 Clause 39.8 – Added after comments received in consultation as a generic statement. Specific details may be held within the schedules of the BCA where appropriate.
- 5.1.6 Clause 39.9 – Terminology change, 'breach' to 'exceed' as a result of consultation. This has been done to avoid confusion with the term Breach when used in context of a breach of the agreement.
- 5.1.7 Clause 39.16 - Added after comments received in consultation.
- 5.1.8 Clause 41 - The Clause was amended to add clarity to the process to be followed: Clause 41.2 defines the process; Clause 41.3 covers who will pay for it.
- 5.1.9 Clause 42 – Amended to facilitate 'Alternative Solutions' to boundary metering. It is deliberately designed to recognise the concept in the DCUSA but does not prescribe what it is. A Working Group under the Electricity Networks Association is currently considering what such an Alternative Solution may comprise. If and when such a solution is developed this could be incorporated into the DCUSA through the Change Process or accommodated under other industry agreements.
- 5.1.10 Clause 42.7 – Interconnection and Generation - Added after comments received in consultation. The revised drafting places obligations on Parties in respect of interconnection and generation.
- 5.1.11 Clause 42.8.2 – drafting revised to improve clarity of obligations of respective Parties in relation to generation.
- 5.1.12 Clause 44.1 – Amended to provide clarity between treatment of Use of System Charges and Transactional Charges.
- 5.1.13 Clause 48 – Amended for clarity and completeness. The terms 'Distributor A' and 'Distributor B' have been used rather than upstream distributor and downstream distributor because in some circumstances it may be difficult to decide who is upstream and who is downstream.

5.1.14 Clause 49 – Group view that the Clause covers off the relevant part of licence condition 20.

5.1.15 Clause 49.11 – Added to include provisions for transfer of information.

5.1.16 Schedule 13 - removed as consequence of consultation comments.

5.1.17 BCA 9.1 – different views on level of liability limits. The drafting now allows for an alternative to the existing DCUSA liability specific to each BCA.

5.1.18 BCA 9.2.5 and 9.2.6 – Added for completeness to cover missed cross references

5.2 Consequential revisions to DCUSA following August Consultation:

5.2.1 Definitions – No longer amending Party Details section following consultation comments. No change to existing DCUSA drafting.

5.2.2 Clause 9.5 – Definition of Part 1 / Part 2 matters for Section 2B have been added based on consultation responses.

5.2.3 Clause 29.8 – Housekeeping change added for consistency between Section 2A and Section 2B

5.2.4 Clause 30.9 – To reflect DCP 006 changes now implemented with DCUSA v1.2a.

5.2.5 Clause 36.1 – amended to reflect change to BCA Clause 9.1.

5.2.6 Schedule 1, Paragraph 2.4 – Last sentence is an addition to the current DCUSA to cover IDNO Parties credit rating.

5.2.7 Schedule 4, Paragraph 1.8c and 1.11 c – clarifying position for arbitration / escalation process.

6 CONSULTATION

6.1 MH noted that DCUSA has already carried out one consultation on the drafting and that the DCP 012 Working Group would carry out a second. MH asked NR if he thought that would be sufficient or if Ofgem was likely to consult on the proposal further. MH suggested that in order to minimise any potential delay NR could advise the group of any areas of concern which could then be covered off in the DCUSA Consultation.

6.2 NR confirmed that he was broadly comfortable with the process being followed by the Working Group and the discussions being held but noted that Ofgem will be looking for a final Change Report proportionate to the scale of the modification. NR recommended that the final report should include robust cost / benefit analysis of the CP – both quantitative and qualitative where possible. NR advised that the Working Group needs to be satisfied that it has discussed and considered all issues broadly. NR reminded members that their scope was tied to the DCUSA objectives but that Ofgem's considerations are broader and that it may need to consult on those. The Working Group agreed that it did not believe Section 2B would

impact on any other codes but agreed that the consultation scope should be broadened to include energywatch, National Grid, BSCCo and MRASCo.

- 6.3 CN reminded the group that one issue that may need further consideration was that of the treatment of CUOSAs and any transition arrangements. Members noted that responses to the August Consultation indicated that the majority of respondents did not feel it appropriate for transition arrangements to be set out in the scope of the CP. MC noted that it may be sensible to ask the question again to reflect the fact that the drafting and potential final position is much clearer now.
- 6.4 NR re-iterated his view made at the Section 2B Project Group meetings that failure to include transition arrangements could undermine the work of the group and recommended that generally a certainty of position going forward is desirable. MH suggested that it was a general expectation that migration will occur in due course but that the timescale should be determined by each Party. NR recognised that commercial considerations were outside the scope of the group but suggested that it may consider that the original objective of the CP was for Section 2B to supersede CUOSAs. NR asked whether Section 2B would be undermined if parallel CUOSAs remained in place.
- 6.5 The group agreed that the purpose of Section 2B was to increase transparency and flexibility that is not in place with the current agreements. PW noted that there is no licence obligation for Parties to sign the BCAs under the DCUSA and therefore no compunction to migrate unless transition arrangements are included in the drafting of the CP. The group concluded that a question on transitional arrangements should be included in the consultation document.

7 TIMETABLE

- 7.1 Members agreed that the Consultation should be issued to all Parties for a Period of 10 Working Days. The following timetable was agreed.

Activity	Target Date
Sub Group to draft Consultation Document	w/e 14 Dec 07
Working Group review Consultation Document	w/e 21 Dec 07
Consultation Issued	24 Dec 07
Consultation End Date	14 Jan 08
Consultation Responses Circulated	15 Jan 08
Working Group meeting	17 – 18 Jan 08
Panel to agree Change Report	23 Jan 08
CP issued to Parties for Voting	24 Jan 08
Change Declaration	08 Feb 08
Authority Determination	11 Feb – 17 March
Implementation Date	25 March 08

8 ANY OTHER BUSINESS

- 8.1 There were no additional items of business.

9 DATE OF NEXT MEETING

- 9.1 The next meeting of the DCP 012 Working Group will convene at 10.00am on Thursday 17 January at ELEXON, London.