



Making a positive difference
for energy consumers

DCUSA Panel Chair, DCUSA Panel,
Electricity Distribution Network Operators,
Electricity Suppliers and other interested parties

Direct Dial: 0207 901 7038
Email: deirdre.bell@ofgem.gov.uk

Date: 21 March 2016

Dear Panel Chair

Authority decision to 'send back' DCUSA modification proposal 181 'Previous Connection Terms Enduring'

On 16 February 2016, the DCUSA Panel submitted a Final Modification Report (FMR) for DCUSA modification proposal DCP181 'Previous Connection Terms Enduring' to us for a decision.

We have decided that we cannot form an opinion on DCP181 based on the information submitted and we therefore direct that the FMR is revised and resubmitted. We are therefore sending the FMR back to industry for further work, to address the deficiencies we have identified below.

The proposal and our initial views

DCP181 is designed to provide clarity on the treatment of bespoke bilateral connection terms when there is a change of customer at a non-domestic premises (with CT metering).¹ At present, if a customer who has bespoke bilateral connection terms sells or moves out of the property, the incoming customer defaults to the generic National Terms of Connection (NTC). DCP181 proposes to amend the NTC so that the terms of the original bilateral connection agreement will bind on the incoming customer, until varied. DCP181 proposes to amend DCUSA to allow DNOs and IDNOs "distributors" to disclose to anyone proposing to be an owner/occupier or prospective owner/occupier whether or not bespoke connection terms apply to a connection.

We agree with the principle of this modification, and understand that distributors will increasingly need to offer flexible connection contracts to customers to enable more active network management and to support cheaper and more timely connections. Distributors need to ensure that the terms of flexible connections will be enduring so the connection continues to be used in the manner in which it was designed at least until new contractual terms are agreed.

Whilst we agree with the principle of the modification, we cannot form a form opinion on DCP181 based on the FMR as submitted. We are therefore sending the proposal back to industry for further work. For this modification to be implemented effectively, if approved, it is important that prospective customers can find out about the terms of a bespoke

¹ Current Transformer meters are generally installed at premises of large industrial and commercial customers

bilateral contract that might apply to them. DCP181 has attempted to describe the arrangements that are intended to make this possible. We do not believe that in their present form these measures are strong enough to protect new customers from inadvertently finding themselves subject to connection terms of which they had no prior awareness. We have set out below our concerns and areas for industry to consider further and address in a revised and resubmitted FMR.

The deficiencies in the FMR

We have identified the following issues in the FMR:

1. The FMR sets out the DCP181 workgroup recommendation that distributors amend bespoke bilateral connection agreement terms to place an obligation on the customer to bring the existence of terms of connection to the attention of any prospective incoming customer.

We think this recommendation is a crucial step to ensure customers are aware of any bespoke terms of connection, and as such we do not think a *recommendation* to distributors is sufficient. In our view, it should be a *requirement*.

2. The FMR sets out the DCP181 workgroup recommendation that distributors should amend bespoke bilateral connection agreement terms to include permission for the distributor to disclose the existence of the contract terms to any person purporting to be a prospective owner or occupier.

We think that this is an important recommendation as it will ensure that customers entering into a bespoke bilateral connection agreement are aware that a distributor can disclose the existence of the terms to any person purporting to be a prospective owner or occupier (as per proposed amendment to clause 17 of DCUSA). We do not think a *recommendation* to distributors to include this term is sufficient. In our view, it should be a *requirement*.

3. The FMR sets out the DCP181 workgroup proposal to add a sub clause to Clause 17 of DCUSA. The sub clause would allow a distributor, on the application of any person purporting to be an owner and/or occupier (or prospective owner and/or occupier) of a connection, to disclose to such person whether or not bespoke connection terms apply to the connection.

We agree that this would give distributors the legal basis to inform prospective customers if bespoke connection terms apply to a connection. We think the legal text should clarify, for the avoidance of doubt, that a distributor can only disclose to a prospective customer whether or not bespoke terms exist, and they cannot disclose the details of the bespoke terms unless the prospective owner and/or occupier has the express permission of the incumbent customer. To ensure that this provision is consistent with section 105(3)(c) of the Utilities Act 2000, we think that the legal text should state that the distributor is obliged to disclose the information (current proposed legal text uses the term 'may').

In light of these matters we direct that the following additional steps are undertaken:

1. require distributors to ensure that bespoke bilateral connection contracts contain an obligation on the customer to inform the potential future owner/occupier about the existence of the bespoke bilateral connection agreement, its terms and that they may be bound by such terms in accordance with the National Terms of Connection (unless they negotiate with a distributor changes to such contract). This requirement should be set out in DCUSA;

2. require distributors to ensure that bespoke bilateral connection contracts contain clauses providing for the consent of the customer for the distributor to disclose the existence of these bespoke contracts to a prospective owner or occupier. This requirement should be set out in DCUSA; and
3. refine the proposed legal text for Clause 17 to clarify (for the avoidance of doubt) that a distributor can only disclose to a prospective owner/occupier the fact of existence of a bespoke contract, and they cannot disclose the details/terms of such bespoke contract, unless the prospective owner and/or occupier has the express permission of the incumbent customer. The legal text should also be refined to clarify that there is an obligation on the distributor to disclose the information.

After addressing the issues discussed above, and revising the FMR accordingly, the DCUSA Panel should re-submit it to us for decision as soon as practicable.

Yours sincerely

James Veaney
Head of Electricity Connections and Constraint Management