

## Comments to DCUSA Consultation on DCP 033.

These comments are in respect of the proposed drafting of the national Terms of Agreement.

### General

Use of the terms "*Connection Agreement*" or "*Agreement*"

It is our view that the connection terms are statutory terms and are established pursuant to Section 21 of the Electricity Act 1989. We believe it is inappropriate to refer to such terms as an "*agreement*" since the customer will have not been in a position to negotiate these and the terms do not constitute a contract. Therefore, we believe that such terms should be referred to in the context of "*these are the terms you are required to accept in order to receive a supply*".

Section 1 of the agreement uses a style of referring to the network operator. Subsequent sections refer to the network operator as being "we, our and us". Consider adopting consistent style across all sections.

We have significant concerns with the proposal for Section 3. We believe that the attempt to shoe horn existing connection agreements into National Terms of Connection fails to recognise the changed nature of such terms; i.e. that the national terms are not standalone agreements and that they are put in place by suppliers entering into supply contracts with consumers. As a distributor, we acknowledge the importance of having robust terms in place. However, there needs to be balance. We believe that the Section 3 terms are excessive. Many of the areas covered by these terms are already covered by statute or through the provision of other industry agreements. It is incumbent on distributors to have terms in place that can be properly understood by consumers.

There is no explanation as to why there is a significant increase in the number of clauses required for Section 3 type consumers as compared to the current National Terms of Connection or an explanation as to what defects these additional clauses seek to address.

### Specific Comments

Specific comments are provided below. However, we have not had time to undertake and complete a detailed review of the proposed drafting. In particular we are concerned at the number of clauses that are deemed to be essential for Section 3 type customers. We provide analysis upto Clause 11 of the section 3. However the theme of our analysis will equally apply to the remainder of the agreement. At the headline level the questions we ask are:

What is the clause trying to do (intent)? What defect is it trying to correct?

Is the area covered by the clause already covered elsewhere?

Why is the clause required for a section 3 customers but not for section 2 customers?

Section 1		
Reference	Page No	Comment
Section 1, Paragraph A	1	<p>In the first bullet point we question the use of the term "connection agreement".</p> <p>It is our view that the National Terms of Connection are established pursuant to Section 21 of the Electricity Act 1989 and that this basis for these terms should be clearly stated in the introductory sentence. We do not believe that these terms constitute a "connection agreement".</p> <p>We believe the introductory sentence is flawed in respect of the 1<sup>st</sup> bullet point.</p> <p><i>"The electricity that is supplied to, or exported from, the premises is conveyed using the network of <del>the</del> your network operator. <del>In order that</del>Before electricity <del>can be</del>is supplied to, or exported from, the premises, <del>there must be both</del>you must:</i></p> <ul style="list-style-type: none"> <li><i>• <del>a connection agreement</del>accept terms under which with the network operator <del>to will</del> maintain the connection to the premises from its network; and</i></li> <li><i>• agree arrangements for the supply, or export, of electricity (usually with an electricity supplier)</i></li> </ul> <p><i>These National Terms of Connection are established pursuant to Section 2 of the Electricity Act 1989 set out the terms and conditions that the network operator requires you to accept in return for providing and maintaining the connection from its network of to the premises <del>to its network for the [sole] purpose of conveying electricity to or from such premises.</del>"</i></p>

Section 1 Paragraph B	1	<p>The drafting amended to correct tenses: the customer agrees to accept connection terms as of agreeing to a supply contract</p> <p><i><u>"Your network operator electricity has appointed your supplier as its agent to make you aware that these National Terms of Connection will apply to you (unless you enter into alternative arrangements as described in paragraph E).</u></i></p> <p><i>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 <del>will also have</del> agreed <del>with the network operator</del> to accept these terms in respect of those premises. <del>This is because your electricity supplier has been appointed as the agent of the network operator to make such an agreement.</del>"</i></p>
Section 1 paragraph C	1	<p>Comment: If a customer enters into a site specific connection agreement (as described by paragraph E) and the customer subsequently moves to other sites. Then, presumably, the National terms will not apply in respect of other premises since they will never have been in force in respect of the first site.</p> <p>Is this the intent?</p> <p>Also, we recognise that under these provisions, a person receiving a supply at one premises is subject to these terms where they are the owner of another premises but where they are not the party who has contracted for receiving a supply. We accept that it is reasonable to require an owner or occupier to enter into terms on respect of specific premises. We question whether it is acceptable to force a person who is a consumer at own premises to enter into and agree terms in respect of other premises where he is not the consumer.</p> <p>Notwithstanding the above, we suggest amending as follows</p> <p><i><u>"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 to the network of your network operator of any other premises of which you are the owner or the occupier (or both the owner and the occupier)".</u></i></p> <p>The point for consideration here is that if a customer connects to one distributor has he agreed to the</p>

		National Terms of Connection in respect of connections he may have to all distributors?
Section 1, paragraph D	2	<p>Amend as follows</p> <p><i>"...if <del>the</del> your 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)."</i></p> <p>Also given that these terms are established through DCUSA, and that not all distributors are members of the ENA, is it appropriate that the connection terms be maintained on an ENA website?</p> <p>Is this not a task that should be undertaken by DCUSA.</p>
Section 1, paragraph D		<p>Amend as follows</p> <p><i>"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 <del>network</del> system through which electricity is conveyed to, and from, that connection; and the term "network operator" means the licensed electricity distributor for the network"</i></p> <p>We propose use of the term "distribution system" since this is more consistent with the terminology in the Electricity Act and the Electricity Distribution Licence.</p>
<b>Section 2</b>		
<b>Reference</b>	<b>Page No</b>	<b>Comment</b>
Section 2, Paragraph 1	4	<p>Amend as follows:</p> <p><i>"In this section 2, <del>the term "this agreement"</del> any reference to "these terms" is a reference to the terms and conditions of sections 1 and 2 of the National Terms of Connection, which you have agreed to accept in respect of the premises (and there will be a separate agreement in respect of each premises). In addition, the terms "we", "us" and "our" are references to the network operator, and the other terms used in this section 2 shall have the same meaning as is given to them in section 1."</i></p>
Section 2, Paragraph 2	4	<p>Amend as follows:</p> <p><i>"The premises will remain connected to our network in accordance with the provisions of the Electricity Act 1989, any other legal requirements that apply from time to time, and the <del>se</del> terms <del>of this</del></i></p>

		<i><u>agreement.</u></i> "
Section 2, Paragraph 3	4	<p>Amend as follows:</p> <p><i>"Our obligations under <del>this agreement</del><u>these terms</u> are subject to the maximum capacity and any other design feature of the connection. You must contact us in advance if you propose to make any significant change to the connection or to the electric lines or electrical equipment at the premises, or if you propose to do anything else that could affect our network or if you require alterations to the connection."</i></p>
Section 2, Paragraph 8		<p>This is a new additional section to that in the current national terms. The consultation does not explain why it believes this is required. We question what protection the clause is intended to give. The ESQCR's have provisions in respect of interference. What <u>purpose</u> does this clause add?</p> <p>If this clause is important for end consumers then similar provisions should be in place in DCUSA in respect of suppliers using networks for purposes than conveying electricity.</p> <p>It would appear to more relevant to put in place provisions in respect of unauthorised supply and make references to relevant schemes established pursuant to paragraph 4 of Schedule 6 of the Electricity Act 1989. Particularly since Part C, Section 1 relates to other premises.</p> <p>Notwithstanding the above, we make the propose following amendments</p> <p>▲-----</p> <p><i><del>"This agreement</del><u>These terms</u> entitles the premises to be connected to our network for the purpose of receiving electricity from, or exporting electricity to, our network. Any other use of our network, including the transmission of data or communications, is strictly prohibited unless with our prior written consent. Unless we have given such consent, any such use of our network by you, or relating to the connection <u>to the premises</u>, shall be a breach of <del>this agreement</del><u>these terms</u>, and you shall be liable for the losses we incur as a result, whether directly or indirectly."</i></p> <p>In respect to the reference to "losses", what losses are being referred to? Schedule 6 (paragraph 6) of the Act places obligations on parties in respect of damage. Why is the losses bit only specific to unauthorised use?</p>

Formatted: Font: Not Italic

		Additionally shouldn't liability provisions be covered separately.
Section 2, Paragraph 9	5	Amend as follows:  "If we fail to comply with any <del>term of this agreement</del> <u>of these terms</u> ...."
Section 2, Paragraph 11	6	Amend as follows:  " <del>Changing this connection agreement these terms</del> . These <del>se</del> terms <del>of this agreement</del> will be changed...
Section 2, Paragraph 12	6	Amend as follows:  "You and we may each, at any time, ask the other to <del>enter into an accept</del> alternative connection <del>agreement terms</del> in respect of the connection if you or we believe an alternative <del>agreement terms are is</del> needed because of the nature of the connection"
Section 2, Paragraph 13	6	Amend as follows  " <del>Ending this agreement these terms. This</del> <del>These terms agreement</del> will end when one of the following occurs: <ul style="list-style-type: none"> <li>• you and we agree <del>a</del>-replacement <u>terms or a replacement</u> agreement in respect of the connection;</li> <li>• the flow of electricity through the connection is permanently stopped; or</li> <li>• any circumstances arise which legally entitle us to cut-off the electricity flow through the connection and we write to you advising you that <del>this agreement these terms no longer apply-is ended</del>.</li> </ul> The ending of <del>this agreement these terms</del> for any reason will not affect any rights, remedies or obligations which may have come into being under this agreement prior to its ending, and clauses 9 and 10 will continue to apply"
Section 2, Paragraph 14	6	Amend as follows  " <del>Transferring this connection agreement</del> . You are not entitled to transfer <del>this agreement these terms</del> to another person without our consent."
Section 2 Paragraph 15	6	We are not convinced that the agreements should refer to the ENA since not all distributors are members of this association. Should contact be through DCUSA Ltd?

Section 2, Paragraph 16	6	We question why 2 distributors should have a carve out from complying with Scots law.
<b>Section 3</b>		
The comments we have made in respect of Section 2 terms also apply in respect of section 3 where there are similar references or provisions. This is particularly in respect of whether it is appropriate to use the term "agreement".		
Section 3 Clause 2.2	16	<p>We struggle to understand the basis of multiple separate agreements with multiple customers where there is only one connection point. This creates significant issues in respect of responsibilities for ownership and operation of assets. What is being suggested here appears to be different from a multilateral agreement.</p> <p>Also these terms are put in place between a single customer and the distributor through the supply contract. Other entities falling under the definition of customer will not be subject to these terms through that supply contract. They would be subject to connections terms via the supply contracts that they enter into with their suppliers. Where there is no supplier in place then it is questionable whether there is a contract in place</p> <p>On what basis is this clause required?</p>
Section 3, Clause 4		
Section 3, Clause 4		<p>We question why this clause is required for C/T metered customers but not required for whole current metered customers. Without further explanation we reject its inclusion</p> <p>Clause 4.1.1 We do not understand why this clause is required for C/T customers (and not for other classes of consumer)</p> <p>Clause 4.1.2 We reject the need for this clause. It is only users who are party to the DCUSA who are obligated to put in place the national terms of connection. The DCUSA already places the provisions of 4.1.2 on suppliers.</p> <p>Clause 4.1.3 We reject the need for this clause. It is only users who are party to the DCUSA who are obligated to put in place the national terms of connection. The DCUSA already places the provisions of 4.1.3 on suppliers. Also it is a requirement of Schedule 7 of the Act</p>

		<p>that metering be installed.</p> <p>Clause 4.1.4 We reject this clause. These terms only apply in respect of the supply contract and in respect of the party contracting with the supplier.</p> <p>Clause 4.1.5 We reject this clause. These terms only apply in respect of the supply contract and in respect of the party contracting with the supplier.</p> <p>Clause 4.2 reject</p> <p>Clause 4.3 reject. These terms only apply because the customer has entered into a supply contract. We do not understand why these terms are required for this class of customer and not for others.</p>
Section 3, Clause 5		The ESQCRs carry the relevant provisions for disconnection on grounds of safety. Why is it acceptable to have a de-energisation clause limited to a single paragraph in section 2 but to require de-energisation provisions to cover nearly 3 pages.
Section 3, Clause 6		Why is this required? – its already covered in DCUSA.
Section 3, Clause 7		<p>Clause 7.1 Compliance with Regulations is a statutory requirement. why is it required here.</p> <p>Clause 7.2 Why does this only apply to Section 3 connections</p> <p>Clause 7.3 Why does this only apply to Section 3 connections</p> <p>Clause 7.4 Covered by ESQCRs</p> <p>Clause 7.5 Covered by ESQCRs</p> <p>Clause 7.6 Covered by ESQCRs (Regulation 21 and 22)</p> <p>Clause 7.7/7.8/7.9 Covered by ESQCRs</p>
Section 3, Clause 8		We are not convinced as to what extent this is required. We believe this area is already covered by statute. We note that such provisions are not in place for majority of customers. There is no analysis as to what defect this clause is trying to correct
Section 3, Clause 9		We accept the need to establish limitations of liability. However many of the other provisions are covered by Sch 6 of the Electricity Act.
Section 3, Clause 10		We believe land rights are outside the scope of these terms and should be covered by separately negotiated land rights.
Section 3,		The Electricity Act makes provision in respect of rights of Access



Clause 11		
-----------	--	--