

DCP 345 – ‘Sandbox Application’

Draft Legal Text

Add the following definitions in Section 1 (‘Definitions and Interpretations’) of the DCUSA Agreement:

Sandbox Applicant means the applicant who has made a Sandbox Application and whose identity is set out in the relevant Sandbox Application.

Sandbox Application means a written request for a derogation, made by the Sandbox Applicant to the Authority pursuant to the Authority’s regulatory sandbox procedures, and which the Authority has passed to the Secretariat for review (such regulatory sandbox procedures being the Authority’s procedures from time to time whereby prospective energy innovators can seek temporary relief from certain industry rules).

Sandbox Register means a register for the purposes of assisting the Panel in the operation and recording of Sandbox Applications from initial requests made by a Sandbox Applicant through to completion of successful Sandbox Applications.

Sandbox Report has the meaning given to that term in Clause 56.10.

Amend Clause 56 in Section 3 (General Legal Provisions) of the DCUSA Agreement as follows:

Panel’s Ability to Grant Derogations (excluding Sandbox Applications)

56.1 The Panel may (subject to Clause 56.3) resolve, on the application of any Party, to grant a derogation to any Party or Parties in relation to any obligation or obligations contained in this Agreement. In resolving to grant such derogation, the Panel may impose such conditions as it sees fit, and shall specify the term, scope and application of such derogation. Derogations, save for derogations requested under Sandbox

Applications, will normally only be granted in respect of newly introduced or amended obligations (or obligations due to be implemented in the future).

56.2 The Panel may, from time to time and as it sees fit (subject to Clause 56.3), resolve to retract any derogation, or to amend or add to the conditions applicable to any derogation.

56.3 A derogation granted to any Party by the Panel under Clause 56.1, or any retraction, amendment or addition under Clause 56.2, shall, in each case, only be effective if made in conformity with any representations received from the Authority in accordance with Clause 56.5.3 and if not vetoed by the Authority within 10 Working Days of notification of the Panel's decision and the rationale for it.

Application for Derogation

56.4 A Party may, at any time, apply to the Panel for a derogation under ~~this~~ Clause 56.1 by notice in writing to the Panel Secretary.

56.5 Where the Panel Secretary receives such an application, it shall ensure that the matter is added to the agenda for the next Panel meeting occurring more than 10 Working Days after receipt of such application, and shall give notice to all the Parties and to the Authority, at least 10 Working Days before the Panel meeting in question:

56.5.1 setting out the identity of the Party by whom the application has been made and the terms of the derogation sought;

56.5.2 specifying the date on which the Panel is due to consider the matter; and

56.5.3 inviting representations or objections with respect to the derogation before that time.

56.6 Where representations or objections are made in accordance with Clause 56.5.3, the Panel Secretary shall, as soon as reasonably practicable after receipt thereof and unless such representations or objections have been marked as confidential, publish those representations or objections on the Website.

Licence Derogations

56.7 Without prejudice to Clause 56.1, where the Authority grants a derogation to a Party under its Licence relieving that Party of certain of its licence obligations (including any derogation in respect of one or more of the Charging Methodologies or any element of them), that derogation shall also be effective for the purposes of this Agreement in the same terms (to the extent relevant to this agreement). The Party seeking to rely upon such derogation shall, as soon as reasonably practicable after receipt of such derogation send a copy of it to the Panel.

Derogation from Performance

56.8 For so long as a Party has the benefit of a derogation in accordance with Clause 56.1 or 56.7, that Party shall be excused from complying with the obligations specified in the terms of that derogation, and shall be deemed not to be in breach of this Agreement for failing to comply with the relevant obligations for the term of the derogation, but shall be required to comply with any modified obligations which are specified as a condition of the derogation.

56.9 A Party may, immediately by notice in writing to the Panel at any time, reject any derogation then applying to it, in which case the derogation shall cease to apply for the purposes of this Agreement and the Party shall become subject to the obligations under this Agreement set out in the derogation in question.

Sandbox Applications

56.10 The Secretariat shall, in respect of any Sandbox Application received from the Authority, add it to the Sandbox Register and prepare a written report (the "**Sandbox Report**") containing the information listed at Clause 56.12.

56.11 The Secretariat shall not be required to conduct an evaluation of a Sandbox Application or submit a draft Sandbox Report to the Panel until the Sandbox Applicant has:

56.11.1 provided all the information that the Secretariat reasonably requires in order to conduct such evaluation and prepare a Sandbox Report; and

56.11.2 paid to the Secretariat a fee which represents the reasonable costs to the Secretariat of processing the Sandbox Application, such fee to be approved by the Panel from time to time.

56.12 The Sandbox Report shall:

56.12.1 be addressed and delivered to the Panel;

56.12.2 specify the identity of the Sandbox Applicant;

56.12.3 specify the Party/Parties seeking the derogation (if not the Sandbox Applicant);

56.12.4 set out the reason for the derogation;

56.12.5 set out the derogation required to this Agreement;

56.12.6 identify any impact on Parties including applicable costs (if any);

56.12.7 state the period of the requested derogation, the end of which shall be no longer than two years from the Authority's approval of such derogation;

56.12.8 state the reason(s) why the derogation better facilitates the DCUSA Objectives; and

56.12.9 set out a reporting plan.

56.13 Following receipt of a Sandbox Report, the Panel shall either:

56.13.1 where the Panel considers that additional work or significant amendment of the Sandbox Report is required, send it back to the Secretariat to further develop or amend the Sandbox Report; or

56.13.2 where the Panel considers that no additional work or amendment of the Sandbox Report is required, ensure that the Sandbox Report is provided to Parties and the Authority within 2 Working Days by the Panel Secretary, and that Parties are invited to submit representations with respect to the Sandbox Application within 10 Working Days of receipt of the Sandbox Report.

56.14 Where representations or objections are made in accordance with Clause 56.13.2, the Secretariat shall, as soon as reasonably practicable after receipt thereof, and unless such representations or objections have been marked as confidential, publish those representations or objections on the Website.

56.15 Following the end of the period referred to in Clause 56.13.2, the Panel shall make its recommendation to the Authority as to whether the Panel considers the Authority should accept or reject the Sandbox Application. The Panel shall consider any representations or objections received from the Parties and the Authority, and may make any amendment or apply any conditions to the derogation request, in making such recommendation.

56.16 Where Clause 56.15 applies, the Secretariat shall provide the Authority with:

56.16.1 the Sandbox Report;

56.16.2 the Panel's recommendation;

56.16.3 any applicable amendments or conditions to apply to the Sandbox Application;

56.16.4 any representations or objections received from Parties; and

56.16.5 at the Authority's request, any other existing documents or information in respect of the Sandbox Application in question.

56.17 In making a determination pursuant to Clause 56.16, the Authority:

56.17.1 may follow such procedure as it considers appropriate;

56.17.2 may have regard to such matters, and to any representations by such Parties, as it considers appropriate; and

56.17.3 shall, in any event, have regard to the recommendation made by the Panel.

56.18 Where the Authority determines that it cannot properly form an opinion on whether to accept or reject the Sandbox Application, the Authority may direct the Panel to revise and re-submit the Sandbox Report, in which case, the following shall apply:

56.18.1 the Panel shall give effect to any direction of the Authority as to how the Sandbox Report should be treated, including where necessary, sending the Sandbox Report back to the Secretariat to consider any matter identified by the Authority in such direction; and

56.18.2 once the Panel is satisfied that the issues identified by the Authority have been addressed, the Panel shall resubmit the Sandbox Report to the Parties and the Authority in accordance with Clause 56.13.2.

56.19 Where the Authority determines pursuant to Clause 56.16 that a Sandbox Application shall be accepted or rejected, it shall direct the Panel accordingly. Any direction will be effectively given if communicated by the Authority to the Panel (which may be care of the Secretariat).

56.20 The Secretariat shall, as soon as is reasonably practicable after receipt of the direction by the Authority as referred to in Clause 56.19, notify the Sandbox Applicant and shall ensure that the Sandbox Register is updated so as to indicate the decision made in relation to the Sandbox Application.

56.21 The Panel may, from time to time and as it sees fit, resolve to retract any derogation, or to amend or add to the conditions applicable to any Sandbox Application subject to seeking representations from Parties and approval from the Authority.