

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

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Dear Panel Chair,

**Authority decision to send back Distribution Connection and Use of System Agreement (DCUSA) modification proposal DCP340 'Notice Period Required to Recover Approved Last Resort Supply Payment Claims which Breach the Materiality Threshold'**

On 13 August 2019, the DCUSA Panel submitted a Change Report (CR) for DCUSA modification proposal DCP340.<sup>1</sup> We have decided that we cannot form an opinion on whether to accept or reject DCP340 based on the CR as submitted to us. We are therefore sending back the CR to industry for further work.

We have decided that we cannot form an opinion on DCP340 based on the CR as submitted to us as we consider there are potential defects in the legal text. We describe the two issues we have identified below.

### 1. Inconsistency between the legal text and the electricity distribution licence

We note that the text in the electricity distribution licence and the legal text in the CR do not align. In particular, where the Materiality Threshold<sup>2</sup> has been breached, standard condition 38B of the electricity distribution licence<sup>3</sup> requires the licensee to notify the Authority that it intends to recover the full amount of any Valid Claim which has caused the threshold to be breached. The licence also states what the licensee must do in order to recover any Valid Claim without providing 15 months' notice, and this is only 'unless the Authority directs otherwise.'

DCP340 proposes the removal of the requirement for distributors to seek a derogation from the Authority for varying charges (related to breaches of the Materiality Threshold) without providing 15 months' notice. However, in the proposed legal text, there is no reference to the ability of the Authority to direct that a distributor may not vary charges according to the shorter notice period. The clause refers to the requirement for the distributor to give notice to the Authority of its intention to recover the payment claims, but does not refer to

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<sup>1</sup> <https://www.dcusa.co.uk/change/notice-period-required-to-recover-approved-last-resort-supply-payment-claims-which-breach-the-materiality-threshold/>

<sup>2</sup> The licence refers to a Materiality Threshold to mitigate the risk distributors take in incurring material costs at relatively short notice and not recovering these costs until at least two years later.

<sup>3</sup> [https://epr.ofgem.gov.uk/Content/Documents/Electricity%20Distribution%20Consolidated%20Standard%20Licence%20Conditions%20%20-%20Current%20Version.pdf?utm\\_source=ofgem&utm\\_medium=&utm\\_term=&utm\\_content=licencecondition&utm\\_campaign=epr](https://epr.ofgem.gov.uk/Content/Documents/Electricity%20Distribution%20Consolidated%20Standard%20Licence%20Conditions%20%20-%20Current%20Version.pdf?utm_source=ofgem&utm_medium=&utm_term=&utm_content=licencecondition&utm_campaign=epr)

the Authority's response to that notice. In this omission, the legal text submitted to us does not align with the provisions of the licence.

## 2. Notice periods in the legal text

We also note that, as proposed, DCUSA Clause 19 would include two notice periods – paragraph 19.1B includes a reference to a 40-day notice period, and paragraph 19.1E would refer to a deadline for distribution network operators of 1 February. The two paragraphs appear to contradict one another; as a result it may be unclear what the relevant notice period is in different circumstances.

We therefore direct that additional steps are undertaken to address these concerns. A revised CR should:

1. review the legal text submitted with the CR to ensure it aligns with the relevant obligations set out in the electricity distribution licence, and
2. review and clarify the legal text at Clause 19 concerning notice periods.

## **Direction**

In accordance with Clause 13.11A of the DCUSA, the Authority directs the Panel to revise and resubmit the Change Report to us for decision as soon as practicable.

Yours sincerely

**Andrew Self**  
**Deputy Director, Electricity Access & Charging**  
**Duly authorised on behalf of the Authority**