

# DCP 328 Working Group Meeting 31

14 October 2021 at 10:00 - Web-Conference

Attendee	Company
<b>Working Group Members</b>	
Chris Ong [CO]	UKPN
Tom Chevalier [TC]	Power Data Associates
Donald Preston [DP]	SSE
Edda Dirks [ED]	SSE Generation
Kara Burke [KB]	NPG
Shannon Murray [SM] (part-meeting)	Ofgem
Will Ellis [WE]	Leep Utilities
<b>Code Administrator</b>	
John Lawton [JL] (Chair)	ElectraLink
Richard Colwill [RC] (Technical Secretariat)	ElectraLink

## 1. Administration

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- 1.1 The Working Group reviewed the “Competition Law Guidance”. All Working Group members agreed to be bound by the Competition Law Guidance for the duration of the meeting.
- 1.2 The Working Group reviewed the minutes from the last meeting and
- 1.3 The Working Group noted the items on the actions list from the last meeting. Updates on all actions are provided in Appendix A.

## 2. Purpose of the Meeting

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- 2.1 The Chair set out that the purpose of the meeting was to continue to discuss and reflect on the responses to the consultation and issues log, review the legal concerns raised and determine next steps.

## 3. Gus Wood (Gowling WLG) – Legal Discussions

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- 3.1 One outstanding action was to explore further whether the EU regulation (Article 37 of the 2009/72 Third Energy Package, para 6) eliminates the concerns mentioned in relation to Distributor Licence Conditions. The following legal advice was received:

I note that a potential conflict with the distribution licence has been identified by the proposer. I have not previously been asked to consider this issue. Let me know if you want me to consider this issue generally.

In respect of the particular point identified regarding the EU Directives:

- 1. Reference is made to Article 37 of EU Directive 2009/72. This Directive has actually been repealed, but it makes no difference as the same requirements now exist in Article 6 of EU Directive 2019/944. It is correct that this article requires EU Member States to implement a system of third-party access to distribution systems based on published tariffs.
- 2. However, this EU Directive is not retained in UK law by the European Union (Withdrawal) Act 2018. This Act retains in UK law only 'direct EU legislation'. Direct EU legislation includes EU Regulations, but will not generally include EU Directives, as EU Directives generally impose requirements which Member States must implement (having a margin of discretion regarding the detail of how they are implemented).
- 3. Prior to Brexit, it would have been possible to argue that licence drafting which was inconsistent with the EU Directive represented improper implementation by the UK - and as a corollary of that, where more than one interpretation was possible, the licence would have been interpreted on the basis that was consistent with proper implementation. However, following Brexit, the EU Directive is not part of the official hierarchy of UK legislation.
- 4. I do not therefore fully agree with the consultation response. I'm afraid it doesn't eliminate the issue.

5. Having said that, I do agree with the general sense of what the respondent is saying – the requirements for third party access to licence exempt distribution networks have been implemented in Great Britain under (primarily) Schedule 2ZA of the Electricity Act 1989, and it therefore follows that licensed distributors need a charging methodology that deals (one way or another) with how charges apply in relation with those connected to exempt networks.
- 3.2 This issue stems from HV and LV customers which are connected to private networks which are themselves connected at EHV. Those private networks do not necessarily meet the definition of ‘Designated Property’. After discussion it was agreed that the intent has always been to treat these customers the same and therefore some wording would need to be added to demonstrate this.
- 3.3 Previous wording discussed was as follows:
- “The CDCM is applicable to “Designated Properties”, as defined in Standard Condition 13A (Common Distribution Charging Methodology) of the DNO Party’s Distribution Licences and properties connected to Licence Exempt Systems at Low Voltage (LV), Low Voltage substation (LVS) and High Voltage (HV)”.
- 3.4 The Working Group is to agree this approach and the wording. This approach will also need to be agreed by Ofgem to ensure that approach is acceptable prior to submitting the Change Report.

**ACTION 30/02: Agree appropriate wording in relation to HV and LV customers connected to private networks which are themselves connected at EHV.**

## 4. Outstanding Actions and Decisions

- 4.1 The Working Group reviewed the outstanding actions log and an updated version of the log can be found in Attachment 1. Key points to the discussions can be found below:
- Issues 1, 2, 4, 5, 9, 14
  - Issue 3 and 8 – Secretariat to follow up with ENWL regarding concerns raised.
  - Rationale for choosing option B to be articulated in Change Report
  - Action 10 regarding interaction with DCP 388 – commentary to be added to Change Report. Action still open at present
  - Action 12 – unintended consequences with IDNOs. This action is still ongoing, and examples of any unintended consequences will need to be added to the Change Report.
  - DCUSA General Objective justifications to be added to the Change Report
- 4.2 KB took an action to discuss with LW whether the development of a PCDM-like discount mechanism for LES tariffs is in scope of this change. KB sent an email (recorded in the action log under action 18), with an update on these discussions.
- 4.3 NPg conclusion was that a PCDM like solution would apply an IDNO-like discount to all LES sites, not just those with competition in supply, which is not what this change was raised to do and not what the

adjustment to the fixed charge was intended to do. They therefore feel that this would be out of scope of this change. After discussion, KB agreed to investigate this further with TC and provide feedback to the Working Group.

- 4.4 The Secretariat took an action to make an initial draft of a Change Report for review at the next meeting.

## 5. Agenda Items for the Next Meeting

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- 5.1 The Working Group discussed the next steps, and the following items were captured:

1. KB and TC to discuss issues raised within section 4.2 and 4.3 of these minutes and provide feedback on outcomes.
2. Secretariat to produce a draft Change Report for review at next meeting.

**ACTION 31/02: KB and TC to discuss issues raised within section 4.2 and 4.3 of these minutes and provide feedback on outcomes.**

**ACTION 31/02: Secretariat to produce a draft Change Report for review at next meeting.**

## 6. Any Other Business

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- 6.1 There were no other items raised.

## 7. Date of Next Meeting

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- 7.1 The date of the next meeting has been scheduled for 28 September 2021 at 10am.

## 8. Attachments

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- Attachment 1: Updated DCP 328 Action Log

## APPENDIX A

### Open Actions

Action Ref.	Action	Owner	Update
31/01	Agree appropriate wording in relation to HV and LV customers connected to private networks which are themselves connected at EHV.	All	
31/02	KB and TC to discuss issues raised within section 4.2 and 4.3 of these minutes and provide feedback on outcomes.	KB and TC	
31/03	Secretariat to produce a draft Change Report for review at next meeting	ElectraLink	

### Closed Actions or actions captured with the action log

Action Ref.	Action	Owner	Update
<b>01/01</b>	ElectraLink to consider approaches to ensure appropriate engagement with private network operators.	ElectraLink	
<b>28/01</b>	Billing the Primary supplier based on gross metered data from the boundary settlement meter. Concern raised that historically DCs were unable to provide this data. Secretariat to explore concerns further.	ElectraLink	
<b>28/02</b>	Secretariat to seek further information in relation to ENWL concern raised in question 3 of consultation.	ElectraLink	
<b>28/03</b>	Review the impact assessments to determine whether appropriate consideration was given in regard to impact on LDNO tariffs.	All	

28/04	Review the impact assessments to determine whether there are any impacts where an end customer is connected to the DNO via both an IDNO and private network.	All	
29/01	Secretariat to seek legal opinion on whether Article 37 of the 2009/72 Third Energy Package addresses the licence condition concerns raised in the consultation.	ElectraLink	
29/02	Secretariat to review legal text and make necessary amendments as stated in paragraph 3.6 and 3.7 of meeting 29 minutes.	ElectraLink	
29/03	Secretariat to review previous discussions regarding capacity and reactive charges to determine why decision was made to allocate to the fixed charge using an average KVA or KVArh.	ElectraLink	
29/04	Secretariat to prepare a summary of the charging objectives comments and include this within the Change Report.	ElectraLink	
29/05	Secretariat to inform the Working Group of what system changes will be required in order for a decision on the preferred solution to be made.	ElectraLink	
29/06	Secretariat to add clarity within the Change Report to state that: whilst ensuring that the data required to ensure the solution is applied transparently and is made available, no commercially sensitive information about individual PNOs is to be published.	ElectraLink	
29/07	Working Group members to review the analysis carried out by KB in preparation for the next meeting for further discussion.	Working Group	
30/01	Secretariat to circulate the updated minutes from meeting 29 post-meeting for final review by the Working Group.	ElectraLink	
30/02	Secretariat to progress with the next steps for option 1 (DC to provide the metering data).	ElectraLink	
30/03	Secretariat to progress with the next steps for Solution B.	ElectraLink	
30/04	Secretariat to circulate the updated analysis regarding impacts to IDNOs document.	ElectraLink	
30/05	Secretariat to check the Modelers Summary document regarding the impacts to IDNOs.	ElectraLink	
30/06	Secretariat to include unintended consequence examples within the Change Report.	ElectraLink	

30/07	Secretariat to create a document explaining why the charging methodology approach was taken and bring back to the Working Group for further discussion.	ElectraLink	
30/08	KB to seek further views from Lee Wells around whether this approach fits within the vires of this Change.	Working Group (KB)	