

Modification proposal:	<b>Distribution Connection and Use of System Agreement (DCUSA) DCP386 – Sharing Network Information with Owners and Occupiers (DCP386)</b>		
Decision:	The Authority <sup>1</sup> directs that this modification be made <sup>2</sup>		
Target audience:	DCUSA Panel, Parties to the DCUSA and other interested parties.		
Date of publication:	20/05/2022	Implementation date:	First DCUSA Release date following Authority Decision Date

## Background

Section 105(1) of the Utilities Act 2000 prohibits the disclosure of information obtained<sup>3</sup> by Distributors relating to the affairs of an individual or business during the lifetime of the individual, or the existence of the business, unless an exception applies.

Distribution Network Operators (DNOs) receive requests for information relating to the Maximum Import Capacity (MIC) and Maximum Export Capacity (MEC) from owners and occupiers during the course of their business. In addition, they also receive similar requests from prospective owners and occupiers. This can result in multiple parties requiring information relating to the same premises.

The MEC and MIC are defined on [page 38 of the DCUSA](#). In brief, the MIC is the maximum amount of electricity which can be imported onto the Distribution System from any given Entry Point. This does not give any indication of usage by the owner or occupier of the premises, only the maximum capacity.

The MEC is the maximum amount of electricity which can be exported onto the Distribution System from any given Entry Point. Similar to the MIC, it does not give any information on actual usage of electricity.

<sup>1</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work. This decision is made by or on behalf of GEMA.

<sup>2</sup> This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

<sup>3</sup> s105 (1) (a) applies to information which has been obtained under or by virtue of the provisions of this Act, Part I of the 1986 Act, Part 1 of the 1989 Act, section 184(5) or 185(5) of the Energy Act 2004 or Part 2 or section 27 or 28 of the Energy Act 2010 or section 50 or 51 of the Energy Act 2013 or section 41 or 100 of the Energy Act 2008 or the Domestic Gas and Electricity (Tariff Cap) Act 2018.

We understand that Distributors do not disclose this unless they have received consent to disclose. Therefore, if a customer is a tenant, the Distributor is unable to provide information to the landlord who owns the premises. In addition, prospective owners or occupiers can similarly be interested in this information as it allows them to better understand whether the premises has the capacity to meet their electricity requirements.

Clause 17.10.1 of DCUSA requires Distributors to place a clause in their connection agreements entitling consent to disclose if the terms of the connection agreement contain terms which are different from the National Terms of Connection. The Proposer states that this supports the position that Distributors cannot discuss the content of any connection agreement with a party who is not the billpayer, without the billpayer's express consent.

### **The modification proposal**

This change proposal seeks to improve the stakeholder experience by allowing the Distributor to provide the MEC or MIC to the owner of a property who is not the bill-paying customer. It was proposed by Eastern Power Networks (the Proposer) on 26 March 2021. The Proposer considers that DCP386 positively impacts DCUSA General Objectives (a)<sup>4</sup> & (d)<sup>5</sup>

Section 105(3) of the Utilities Act provides an exception that a disclosure may be made if it is made by a licence holder and is required to be made by a condition of their licence. The proposer considers that, by placing a new clause in DCUSA worded "the company shall be entitled to disclose", subsection 3 (c) of s105 will apply, and the disclosure would be permissible under the Utilities Act. In addition, by a change to the National Terms of Connection, customers will agree to this approach to the sharing of the MIC and MEC.

Having this information will allow owners or occupiers, or prospective owners or prospective occupiers to understand the maximum electricity a premises can export/import and give them a better understanding of whether the premises' connection will be suitable for their needs. This will not inform them of current or actual electricity usage, only maximum potential.

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<sup>4</sup> Applicable DCUSA Objective (a) – The development, maintenance, and operation by the licensee of an efficient co-ordinated, and economical Distribution Networks (condition 22.2 (a) of the Electricity Distribution Licence).

<sup>5</sup> Applicable DCUSA Objective (d) – The promotion of efficiency in the implementation and administration of the DCUSA arrangements (condition 22.2(d) of the Electricity Distribution Licence).

The positive impacts are expected to include easier communication with parties who are not the bill-payer; namely landlords where tenants are the named bill-payer; Houses of Multiple Occupancy (HMOs) where a bill-splitting service or split bills are present with a single named bill-payer; or scenarios where prospective owners are trying to establish the MIC/MEC of a premises.

We understand that these situations have caused frustration to the Distributors as Letters of Authority or other documentation verifying the valid interest of parties have not been considered sufficient to allow legal disclosure.

The change proposal aims to promote more co-ordinated and economical distribution networks and looks to increase the efficiency of implementation and administration of the DCUSA.

Distributors will need to be satisfied that the person can show a reasonable cause for requiring the information. However, we understand that, in the case of landlords, this is expected as a matter of course, and for prospective owners, verification will be part of any purchase process, and is not expected to cause additional costs.

### **DCUSA Parties' recommendation**

In each category where votes were cast<sup>6</sup> there was unanimous support for the proposal and for its proposed implementation date. In accordance with the weighted vote procedure, the DCUSA recommendation to the Authority is that DCP386 is accepted. The outcome of the weighted vote is set out in the table below:

<b>DCP386</b>	WEIGHTED VOTING (%)							
	DNO <sup>7</sup>		IDNO/OTSO <sup>8</sup>		SUPPLIER		CVA <sup>9</sup> REGISTRANT	
	Accept	Reject	Accept	Reject	Accept	Reject	Accept	Reject
CHANGE SOLUTION 326	100%	0%	100%	0%	n/a	n/a	n/a	n/a
IMPLEMENTATION DATE	100%	0%	100%	0%	n/a	n/a	n/a	n/a

<sup>6</sup> There are currently no gas supplier parties.

<sup>7</sup> Distribution Network Operator.

<sup>8</sup> Independent Distribution Network Operator/Offshore Transmission System Operator.

<sup>9</sup> Central Volume Allocation.

## **Our decision**

We have considered the issues raised by this change proposal, and the Change Declaration and Change Report dated 15 February 2022. We have considered the vote of the DCUSA Parties on DCP386 which is attached to the Change Declaration. We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the Applicable DCUSA objectives;<sup>10</sup> and
- directing that the modification is approved is consistent with our principal objective and statutory duties.<sup>11</sup>

## **Reasons for our decision**

We consider that this modification proposal will better facilitate DCUSA objectives (a) and (d) and has a neutral impact on the other applicable objectives.

This change proposal supports an increase in the flexibility of data in the system by making a minor adjustment to the DCUSA. and is in accordance with the Ofgem Data Best Practice Principles (DBPP)<sup>12</sup>, in that it moves towards a presumption of open data assets where practicable and permitted.

### ***Applicable DCUSA Objective (a) - the development, maintenance, and operation by the licensee of an efficient, co-ordinated, and economical Distribution System***

We note that voting parties recommended that DCP386 better facilitates this objective than the baseline because it makes clear to Distributors that the MIC and/or MEC of the premises can be shared with parties other than the bill-payer of the premises, without the need to obtain permission each time, as the National Terms of Connection which the customer agrees to will entitle the DNO to disclose such information. Overall, the respondents to consultation on this change proposal were supportive of the change.

However, as regards providing the information to prospective owners, there was a mixture of views as to the business process by which this information should be entitled to be disclosed. There was proposed a varying degree of formality, varying level of

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<sup>10</sup> The Applicable DCUSA Objectives are set out in Standard Licence Condition 22.2 of the Electricity Distribution Licence.

<sup>11</sup> The Authority's statutory duties are wider than matters that the Parties must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

<sup>12</sup> [https://www.ofgem.gov.uk/sites/default/files/2021-11/Data\\_Best\\_Practice\\_Guidance\\_v1.pdf](https://www.ofgem.gov.uk/sites/default/files/2021-11/Data_Best_Practice_Guidance_v1.pdf).

verification of the requester, and varying level of evidence of having a reason to have the information.

As regards providing the information to prospective owners, one respondent was of the view that evidence should be requested formally with evidence of a legitimate reason for requesting the information, for example a request from a conveyancer. One believed that there should be evidence to show intent to take over/move into the premises, including a letter of authority from the current tenant or a mortgage rental agreement, and that there could be redaction of sensitive or personal information. We believe this should be a decision for the individual Distributor.

One respondent said that, on the basis that the MIC/MEC does not constitute personal data and sharing of this information would be facilitated via the DCUSA agreement, any “due diligence” could be explored further. Alternatively, the legal text could remain broad to leave individual organisations to determine the business process.

The finalised legal text provides that a person purporting to be an owner/a prospective owner needs to show reasonable cause for requiring the information before they are entitled to disclosure. We are content not to be more prescriptive. We consider the level of evidence or verification required before distributors should disclose the information is not in the scope of the proposal and is a matter for distributors.

We agree with the respondents that this change proposal will support and better facilitate an effective and economical Distribution Network System.

This change to the DCUSA will support Ofgem’s DBPP; namely principle 11, to treat all Data Assets, their associated Metadata and Software Scripts used to process Data Assets as Presumed Open where practicable and permitted.

We view this change proposal as having a positive effect on DCUSA Objective (a), as it will assist DCUSA participants remove ambiguity in what information can be disclosed, and we do not anticipate consumer harm in the process.

***Applicable DCUSA Objective (d) – the promotion of efficiency in the implementation and administration of the DCUSA arrangements***

We note the views of the DCUSA parties in the Change Declaration as regard to this objective being positively impacted by DCP386. Overall, the respondents to consultation on this change proposal were supportive of the change.

When asked whether there was any other acceptable information that could be shared, e.g. details of connection constraints, the majority of respondents believed that other information should be shared within the scope of the CP. Respondents made various comments, particularly around widening the permitted data sharing to include whether a connection was constrained or not.

One commented that there should be other information deemed acceptable to share e.g. excessive reactive power that needs to be corrected by the installation of new equipment. Another said that consideration could be given to providing information regarding the number of phases, security of supply and any agreed constraints. We considered these discussions to be outside the scope of this Change Proposal.

A view was expressed that, following the Access & Forward-Looking Charges Review, constrained connections are likely to increase and sharing information on it is therefore logical. We note that the information proposed to be shared on constrained connections in DCP386 is binary and so limited to a yes/no answer. We are content with the sharing the existence of a constraint as opposed to sharing details of the constraint.

A common theme in the responses (as set out against the previous objective), was the view that Distributors could be more efficient in their operation and add clarity and efficiency to the operation of the DCUSA by disclosing this information to parties with a valid need. We agree with this view, and believe it supports the change proposal.

Distributors, in the performance of the DCUSA, need to comply with data protection legislation. We note the comments of the consultation respondents suggesting that more can be done to open up data and the sharing of data. We would encourage DCUSA and DCUSA parties in this direction of travel, where practicable and permitted.

This change proposal solution will support Ofgem's DBPP; namely principle 11, to treat all Data Assets, their associated Metadata and Software Scripts used to process Data Assets as Presumed Open where practicable and permitted.

Therefore, we consider DCP386 has a positive effect on Objective (d) and is in line with the Authority's wider data policy goals.

## **Legal Text**

We note that the proposed legal text refers to the phrase “connection is subject to any constraints” as part of the disclosure information as per new legal text 17.10B.2. We cannot find any legal definition for this phrase or ‘constraints’ in this context and note that the disclosure of this additional piece of information did not form part of the original DCP386 change proposal.

Therefore, the Authority requests, to facilitate clarity and consistency in the administration of the DCUSA, that the DCUSA Panel make a ‘housekeeping’ change proposal as soon as practicable to clearly define what are meant by constraints in clause 17.10B.2 of the DCUSA. Consideration could be given to the [Energy Network Association definition](#) as a basis. This is needed for the avoidance of doubt as to the extent of the sharing of information intended by DCP 386. We welcome any other suggestion to implement such a definition into the DCUSA.

## **Decision notice**

In accordance with standard licence condition 22.14 of the Electricity Distribution Licence, the Authority hereby directs that change proposal DCP386: ‘Sharing Network Information with Owners and Occupiers’ be made.

## **Heather Swan**

### **Head of Energy Sector Data Regulation**

Signed on behalf of the Authority and authorised for that purpose.