




DCUSA Change Report		At what stage is this document in the process?
<h1>DCP 431</h1> <h2>Party Novation Process</h2> <p>Date Raised: 10 October 2023</p> <p>Proposer Name: David Ballantyne</p> <p>Company Name: Eco Green Management Limited</p> <p>Party Category: Supplier</p>		01 – Change Proposal
		02 – Consultation
		03 – Change Report
		04 – Change Declaration
<p>Purpose of Change Proposal:</p> <p>DCP 431 seeks to add clarity to the DCUSA for how a Party can transfer its rights and obligations to another Party via a novation agreement.</p>		
	<p>This document is issued in accordance with Clause 11.20 of the DCUSA. Parties are invited to consider the proposed amendment (Attachment 1) and submit their votes using the Voting form (Attachment 2) to dcusa@electralink.co.uk by 16 January 2024.</p>	
	<p>The voting process for the proposed variation and the timetable of the progression of the Change Proposal (CP) through the DCUSA Change Control Process is set out in this document.</p>	
	<p>If you have any questions about this paper or the DCUSA Change Process, please contact the DCUSA by email to dcusa@electralink.co.uk or telephone 020 7432 3011.</p>	
	<p>Impacted Parties:</p> <p>All DCUSA Parties</p>	
	<p>Impacted Clauses:</p> <p>Section 1A – Clause 2 & Section 3 – Clause 60</p>	

Contents

1 Executive Summary	3
2 Governance	3
3 Why Change?	3
4 Solution	4
5 Relevant Objectives	4
6 Impacts & Other Considerations	5
7 Implementation	6
8 Legal Text	6
9 Recommendations	7
10 Attachments	7



Any questions?

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Timetable

The timetable for the progression of the CP is as follows:

Change Proposal timetable

Activity	Date
Initial Assessment Report	18 October 2023
Consultation Issued to Industry Participants	N/A
Change Report Approved by Panel	20 December 2023
Change Report issued for Voting	21 December 2023
Party Voting Closes	16 January 2024
Change Declaration Issued to Parties	18 January 2024
Implementation	29 February 2024

1 Executive Summary

What?

- 1.1 To amend the DCUSA to allow for the transfer the historic rights/obligations of an existing Party to a new Party via a novation agreement. Parties are able to transfer their Licence with Ofgem approval and the BSC has a process for the transfer of historic rights/obligations too and any Party looking to make use of those processes would not be able to do so under the DCUSA currently.

Why?

- 1.2 The DCUSA does not currently allow for such a process. The DCUSA would need to be changed to allow for a novation (and to authorise DCUSA Ltd. to agree to a novation on behalf of the other DCUSA Parties).
- 1.3 If the DCUSA is not amended to allow for a novation, then the only option would be for the old company to withdraw and for the new company to accede. The problem with this approach is that the historic liabilities will remain with the old company and in general, it is assumed that that company is presumably being wound-up.

How?

- 1.4 It is proposed that Clause 60 in Section 3 be updated to include additional sub-clauses to cover off the scenario where an existing Party wishes to transfer the historic rights/obligations to another Party.

2 Governance

Justification for Part 1 Or Part 2 Matter

- 2.1 The Proposer does not believe that this CP meets the criteria for it to be considered as a Part 1 Matter, and therefore, considers that it should be treated as a Part 2 Matter.

Requested Next Steps

- 2.2 The Panel recommends that this CP should be issued to Parties for Voting.

3 Why Change?

Background of DCP 431

- 3.1 The DCUSA Secretariat recently received and responded to an enquiry, where it became apparent that Parties would likely need to make use of a novation process where a Party has completed or was in the process of completing a licence transfer via Ofgem and a novation of BSC rights/obligations.
- 3.2 Following an investigation, the DCUSA Secretariat was not sure if the DCUSA could accommodate a process to account for such instances and noted that it appeared that a new Accession Application alongside a request to withdraw would be the only way this could be achieved currently,

- 3.3 This scenario was put to the Panel, and the Panel suggested that there might be a need for a novation process to be included within the DCUSA as accession/withdrawal may not deal with historic liabilities in a satisfactory way but noted that a novation would need both companies involved to sign it though.
- 3.4 Following a discussion during a Panel meeting, the Panel agreed that their preference would be to amend DCUSA to allow for a novation to be completed in certain circumstances and were happy for DCUSA Ltd.'s legal advisors to draft some text to that effect. The Panel believes that this should future proof any changes of ownership for whatever reason.
- 3.5 DCUSA Ltd.'s legal advisors also confirmed that based on the existing DCUSA text, there is a need to create a novation process in order to deal with the transfer of historic rights/obligations between Parties.

4 Solution

- 4.1 It is proposed to amend the DCUSA (Clause 60 in Section 3) to include provisions relating to how a Party may transfer its rights and obligations under the DCUSA to another entity via the creation of a novation process. To enable a Party to novate its rights and obligations under the DCUSA, the transferring Party, the transferee entity and DCUSA Ltd. will need to enter into a novation agreement. It should be noted that a template novation agreement has been included (see Attachment 4) but that it is not proposed that this is included within the DCUSA text itself and becomes a document maintained by the Panel outside of the formal change process.
- 4.2 The legal text to achieve the Proposer's solution was provided by DCUSA Ltd.'s legal advisor and is set out in more detail in Section 8 below:

5 Relevant Objectives

Assessment Against the DCUSA Objectives

- 5.1 For a DCUSA CP to be approved it must be demonstrated that it better facilitates the DCUSA Objectives. There are five General Objectives and six Charging Objectives. The full list of objectives is documented in the CP form provided as Attachment 3.
- 5.2 The Proposer believes that the following DCUSA General Objective is better facilitated by DCP 431:

	DCUSA General Objectives	Identified impact
<input type="checkbox"/>	1. The development, maintenance and operation by the DNO Parties and IDNO Parties of efficient, co-ordinated, and economical Distribution Networks	Neutral
<input type="checkbox"/>	2. The facilitation of effective competition in the generation and supply of electricity and (so far as is consistent therewith) the promotion of such competition in the sale, distribution and purchase of electricity	Neutral

<input type="checkbox"/>	3. The efficient discharge by the DNO Parties and IDNO Parties of obligations imposed upon them in their Distribution Licences	Neutral
<input checked="" type="checkbox"/>	4. The promotion of efficiency in the implementation and administration of the DCUSA	Positive
<input type="checkbox"/>	5. Compliance with the EU Internal Market Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	Neutral

5.3 Objective 4 – by allowing for the smooth transfer of one Party's rights/obligations to another Party where there is a need to do so, DCP 431 enhances the administration and maintenance of DCUSA and therefore better facilitates DCUSA General Objective 4.

5.4 It is believed that there is a neutral impact on the rest of the objectives.

6 Impacts & Other Considerations

Impacts on any Significant Code Review (SCR) or other significant industry change projects

6.1 The Proposer does not believe that this CP impacts upon any current SCR or other significant industry change projects.

Impacts Other Codes

6.2 The Proposer does not consider that there are any impacts to any other 'Industry Codes' as a result of the implementation of this CP.

Grid Code..... ☐ SEC..... ☐ CUSC..... ☐
 Distribution Code... ☐ REC..... ☐ BSC..... ☐
 None..... ☒

Consumer Impacts

6.3 The Proposer does not believe that this change will impact consumers.

Environmental Impacts

6.4 In accordance with DCUSA Clause 10.4.5A, the Proposer assessed whether there would be a material impact on greenhouse gas emissions if this CP were implemented. The Proposer did not identify any material impact on greenhouse gas emissions from the implementation of this CP.

Confidentiality

6.5 Non-confidential.

7 Implementation

- 7.1 The proposed implementation date for this CP is the next applicable DCUSA release date following approval, which would mean that the change, should it be approved, is to be implemented on 29 February 2024.

8 Legal Text

- 8.1 The legal text for DCP 431 has been reviewed by the DCUSA legal advisors and is provided below for ease of reference but can also be found within Attachment 1 to the Change Report.

Amend Clause 2.2.1 of Section 1A as follows:

Duration

- 2.2 Once it comes into effect, this Agreement shall remain in effect:
- 2.2.1 in respect of each Party, until (subject to Clauses 54.8 and 54.9) such Party ceases to be a Party in accordance with Clause 54.5 or 60.19; and
 - 2.2.2 generally, until (subject to Clauses 54.8 and 54.9) all of the DNO Parties and all of the IDNO Parties have ceased to be Parties in accordance with Clause 54.5.

Add new subheading and Clauses 60.16 to 60.19 to Section 3 as follows:

Novation

60.16 With the approval of the Panel (at their discretion, but subject to Clause 60.19), a Party may transfer its rights and obligations under this Agreement to another entity. In order to give effect to such transfer, the transferring Party, the transferee entity and DCUSA Ltd (on behalf of itself and each other Party) shall enter into a novation agreement (in such form as the Panel may approve from time to time). Without limitation, the Panel must not approve novation to a transferee entity which is not eligible to accede to this Agreement in the Party Category(ies) of the transferring Party.

60.17 Each Party hereby irrevocably and unconditionally authorises DCUSA Ltd to execute and deliver, on behalf of such Party, any novation agreement approved by the Panel under Clause 60.16.

60.18 For clarity, the entity wishing to take a transfer of rights and obligations under Clause 60.16 may or may not already be a Party via its own Accession Agreement. Where the transferee entity is already a Party, the transferred rights and obligations shall become subject to such Party's existing Accession Agreement from the effective date of the novation agreement. Where the transferee entity is not already a Party, the transferring Party's Accession Agreement shall, from the effective date of the novation agreement, be

treated as the transferee Party's Accession Agreement (and the transferee entity shall be deemed to have acceded to this Agreement).

60.19 The effect of each novation agreement entered into pursuant to Clause 60.16 will be to end the transferring Party's accession to this Agreement from the effective date of the novation agreement. Accordingly, the Panel shall not approve a Party's transfer of its rights and obligations under Clause 60.16 if such Party's accession cannot be terminated in accordance with Clause 54.6.

Text Commentary

- 8.2 It is proposed that Clause 60 in Section 3 be updated to include additional sub-clauses to cover off the scenario where an existing Party wishes to transfer its rights/obligations to another Party.
- 8.3 It should be noted that the legal drafting takes account of where transferees are already Party to the DCUSA and where they are not already Party to the DCUSA as it may be the case that some transferees are already parties and therefore it was easier to have one process rather than two.

9 Recommendations

Panel's Recommendation

- 9.1 The Panel approved this Change Report on 20 December 2023. The Panel considered that the Proposer has carried out the level of analysis required to enable Parties to understand the impact of the proposed amendment and to vote on DCP 431.
- 9.2 The Panel have recommended this report be issued for voting and DCUSA Parties should consider whether they wish to submit views regarding this Change Proposal. The voting form acts as Attachment 2 to this Change Report or can be completed via the online voting form which will be available on the following page of the DCUSA website: [DCP 431 'Party Novation Process'](#)

10 Attachments

- Attachment 1 - DCP 431 Legal Text
- Attachment 2 - DCP 431 Voting Form
- Attachment 3 - DCP 431 Change Proposal
- Attachment 4 - Template Novation Agreement