

DCP 433 Working Group Meeting 05

18 April 2024 at 14:00 - Web-Conference

Attendee	Company
Working Group Members	
Victoria Burkett [VB]	SSE
Robert Mottershead [RM]	Sedulity Energy Ltd
Edda Dirks [ED]	SSE Generation
Chris Barker [CB]	ENWL
Michael Hewitson [MH]	Trident Utilities
Babatunde Olukotun [BO]	NGED
Ryan Farrell [RF]	NPg
Chris Ong [CO]	UKPN
Lorna Murray [LM]	SPEN
Apologies	
Donna Jamieson [DJ]	IDCSL
Code Administrator	
Craig Booth [CB] (Chair & Secretariat)	ElectraLink

1. Administration

Recording

- 1.1 The Chair asked members if they were comfortable for this Working Group to be recorded. No members objected to this request. The purpose of this recording is purely to aid the Technical Secretariat in producing an accurate report of the meeting. The recording will be deleted after 15 Working Days.

Competition Law Guidance and Terms of Reference

- 1.2 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.

2. Purpose of the Meeting

- 2.1 The Chair set out that the purpose of the meeting was to review the draft change report and legal text.

3. Previous Minutes and Actions

- 3.1 The Working Group reviewed the draft minutes of the previous meeting. No changes to the draft minutes were made.
- 3.2 Action 04/01: The Chair had circulated the draft change report to the Working Group and had sent the legal text to Gowlings. This action was closed.

4. DCPs 433 and 439

- 4.1 A Working Group member had highlighted that they believed the changes proposed by DCP 439 to be similar to those proposed under this CP and that the two CPs ought to be progressed in parallel.
- 4.2 The Working Group considered the impact on the timescales and the need for a derogation if this CP is not progressed to the May Panel and decided through a majority vote that the CP should continue to be progressed according to the current timetable.

5. Limitation Act (1980) & Prescription and Limitation (Scotland) Act 1973

- 5.1 A Working Group member had noted that the aforementioned DCP 439 referenced the statutory limitations on how far back companies may go for claims under a breach of contract, which is six years in England and Wales, as per the Limitation Act (1980), and five years in Scotland, as per the Prescription and Limitation (Scotland) Act 1973.
- 5.2 The Working Group member suggested that the Working Group explore whether the Limitation Act affects the proposed solution. If so, the Working Group member thought that the law takes precedence over industry code provisions which could prevent the proposal going ahead.
- 5.3 The Secretariat had obtained guidance from its legal advisors, which is attached to this change report as attachment 6, which explained that “*there are statutory limitations which prevent claims (e.g., for*

breach of contract) being brought after a period of time (i.e., 6 years for E&W breach of contract claims). However, these are limits – not minimum requirements. There is nothing to prevent parties agreeing shorter time periods within which claims must be brought.”

- 5.4 The Working Group considered the advice sought from DCUSA’s legal advisors.
- 5.5 The Working Group discussed that the statutory limitations would be applicable to where errors have been made, which is not the case in the Annual Allocation Review process and DNO Parties will have followed this correctly. It was also noted that this proposal would not prevent a dispute being raised with the disputes committee.
- 5.6 The Working Group also noted that this CP would be sent to the Authority for a decision and the Authority would have its own lawyers review the proposed change.
- 5.7 Taking into consideration the above discussions, the Working Group agreed that the CP could therefore still be progressed.

6. Draft Legal Text

- 6.1 The Working Group reviewed the legal text from Gowlings.
- 6.2 The Working Group amended Paragraph 6.10 to make it more concise and corrected a defined term (changing LLFC ID to LLFC Id, as per the definitions.)

Action 05/01: Chair to send the final version of the draft legal text to Gowlings for its final review.

7. Draft Change Report

- 7.1 The Working Group reviewed the draft change report.
- 7.2 The Chair advised that the change report would be packaged up for the May Panel on the morning of 7 May 2024, and requested that any final comments be sent by close of business on Friday 3 May 2024. The Working Group requested that the Chair highlight the amendments to the change report to help facilitate a quicker turnaround of the final offline review.

Action 05/02: Chair to issue the draft change report to the Working Group for review, with the amendments highlighted.

8. Next Steps

- 8.1 The Chair explained he would produce the change report pack on Tuesday and submit this to the May Panel.
- 8.2 No further Working Group meetings have been scheduled.

9. Any Other Business

- 9.1 No other business was raised.

New and Open Actions

Action Ref.	Action	Owner	Update

Closed Actions

Action Ref.	Action	Owner	Update
01/01	Secretariat to request files from DNOs and aggregate data in readiness for the next working group.	Secretariat	Closed
02/01	The Secretariat to contact the proposer for DCP 433 to gain approval on adding in additional context to the change proposal.	Secretariat	Closed
02/01	Chair to correct the minutes.	Chair	Closed
02/02	Chair to draft first version of the consultation and issue this to the Working Group for review as soon as possible, by no later than 15 March.	Chair	Closed
02/03	Chair agreed to check whether it was possible to retrospectively change the status of a Change Proposal.	Chair	Closed
03/01	Reach out to Peter Waymont regarding the UKPN response.	Chair	Closed
03/02	Summarise the response to the proposed alternative solutions and circulate this to the Working Group	Secretariat	Closed
03/03	Circulate the proposed alternative draft legal text for comparison with the current draft legal text.	Secretariat	Closed
03/04	Circulate a draft change report in advance of the next meeting.	Secretariat	Closed

DCUSA

04/01	Send the draft legal text to Gowlings for review and circulate the draft change report to the Working Group.	Chair	Closed
05/01	Send the final version of the draft legal text to Gowlings for its final review.	Chair	Closed post meeting
05/02	Issue the draft change report to the Working Group for review, with the amendments highlighted.	Chair	Closed post meeting