

DCP 439 Working Group Meeting 03

05 June 2024 at 10:00 - Web-Conference

Attendee	Company
Working Group Members	
David Fewings [DF]	Inenco
Edda Dirks [ED]	SSE
Emma Clark [EC]	SSE
Joe Boyle [JB]	SPEN
Karl Maryon [KM]	Drax
Louise Wardle [LW]	NPg
Michael Hewitson [MH]	Trident Utilities
Peter Waymont [PW]	UKPN
Robert Mottershead [RM]	Sedulity Energy
Simon Vicary [SV]	EDF
Victoria Burkett [VB]	SSE
Code Administrator	
Andy Green [AG]	Chair
Hannah Proffitt [HP]	Secretariat
Apologies	
Chris Ong [CO]	UKPN
Ryan Farrell [RF]	NPg

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.

Apologies

- 1.2 Apologies are noted in the table above.

Competition Law Guidance and Terms of Reference

- 1.3 The Working Group reviewed the “Competition Law Guidance” and “Terms of Reference”. All Working Group members agreed to be bound by the Competition Law Guidance for the duration of the meeting and agreed to the Terms of Reference.

Minutes of the previous meeting

- 1.4 The group approved the minutes without amendment.

Action Log

- 1.5 The group reviewed the actions. A summary can be found in the Appendix.

2. Purpose of the Meeting

- 2.1 The Chair set out that the purpose of the meeting was to review the Request For Information (RFI) responses and to establish next steps.

3. Review of RFI Responses

Review of RFI Responses

- 3.1 The Chair advised that five responses had been received to the RFI. The Working Group reviewed the collated responses.
- 3.2 The Working Group agreed for the responses to be aggregated for inclusion in the consultation and change report as some responses were confidential.

Question 1 - Have you backdated tariff changes for any of the following reasons?

- *the voltage of connection;*
- *import/export details;*
- *metering location;*
- *Multi MPAN sites (associated MPANs);*
- *LV or HV Substation Tariff*

- 3.3 The Working Group noted that those who had responded had all stated they have.

Question 2 - Please complete the table to highlight how many times backdated tariff changes have been made in the last 12-month period.

- 3.4 Members asked for clarity regarding what is meant by NFDs. One member advised that this refers to the situation in which a customer has submitted a Non-Final Demand (NFD) certificate necessitating a change to their fixed charges which needs backdating. Another member noted that TCR is likely to refer to a movement in band.
- 3.5 One member recalled a discussion at the previous meeting regarding why LV to HV should not be included in the table.
- 3.6 The Secretariat agreed to review the transcript of that meeting to find the information.

Action 03/01 – Secretariat to review the recording of the previous meeting to find discussion on why LV to HV should not be included in the table.

Post meeting note – the RFI questions were discussed at the first Working Group meeting on 08 May 2024 which was more than 15WD previous and therefore the recording is not available.

- 3.7 The Proposer suggested that these would be picked up under the ‘other’ category anyway so it is not an issue.
- 3.8 A member highlighted that one response stated they had removed banding charges, whereas they have included them. Therefore, the numbers may not be comparable.
- 3.9 The Proposer clarified that anything included in ‘other’ is not covered by the change as the wording is very specific.
- 3.10 The Chair suggested that the tables are aggregated. The Proposer agreed but noted that it needs qualifying what is in the ‘other’ column as some of these are not relevant to the change.
- 3.11 Members took an action to come back with an updated volume of ‘others’.

Action 03/02 – Members to remove irrelevant cases from ‘other’ column of question 2 and provide updated volume.

Question 3 - Where you have volume in the ‘Other’ column, please expand on these scenarios.

- 3.12 The members reviewed the scenarios given.
- 3.13 The Proposer asked how far back non final demands can go. A member advised that it can be a mixture and that they would only ever backdate as far as the date upon which the certificate to certify they are non final demand was received. The member noted it is most likely to be a few months and that it is rare to backdate past this.
- 3.14 The member suggested that text may need to be updated elsewhere in DCUSA. The member noted that it currently refers to the date a certificate was received and that if there is a case that a certificate was received over 14 months ago and has been missed, it could end up in a dispute.

- 3.15 The group agreed to include a consultation question regarding any other necessary updates to DCUSA.
- 3.16 One member noted that if a blanket approach is taken of only backdating 14 months, there is a risk that some customers could have been paying significant final demand charges for which they are then not going to get rebilled for. In some circumstances this could be due to updates not being made correctly even though the customer had advised of them. For example the certificate could have gone to the wrong team.
- 3.17 The Proposer noted the cost of maintaining a legacy system for a small number of these customers. The Proposer advised that limitations to backdating are common across industry.
- 3.18 Another member highlighted that the end customer needs to be considered and that customer protection should not be removed due to system limitations.
- 3.19 The Chair took an action to contact the Market-wide Half-Hourly Settlement (MHHS) Programme to see how they are approaching similar scenarios regarding backdating.

Action 03/03 – The Chair to contact the Market-wide Half-Hourly Settlement (MHHS) Programme to see how they are approaching similar scenarios regarding backdating.

Question 4 - What are the root causes of backdating tariffs beyond 14 months?

- 3.20 Members noted the responses.

Question 5 - What are the perceived system limitations you may have in backdating beyond 14 months? Does this change after MHHS?

- 3.21 Members noted the responses.

Question 6 - Do you have any other comments?

- 3.22 Members noted the responses.

Review of Email Drafted by DF

- 3.23 The Chair advised that DF had sent an email ahead of the meeting, outlining points for consideration.
- 3.24 DF noted that when the CDCM came into effect in 2010, the new rules defining the substation tariff came into effect. DF noted that at that time there was no obligation for those customers to change the line loss factors and to check that the line loss factors were correct.
- 3.25 DF noted that the mechanism for back dating six years was brought in to cover that situation as no one was checking the substations to see whether there should be a substation supply or a network supply. DF noted that the argument at the time was that if the DNOs were not checking then the customers should be reimbursed if an error was found. DF outlined that a large amount of money has been refunded to customers.
- 3.26 DF noted that customers are being overcharged because there has never been a requirement on the DNOs to check that these supplies are correctly classified following a change in the rules.
- 3.27 DF advised that they have queries around the data provided by DNOs in the RFI, noting that they know of many more instances than have been reported.

3.28 One member noted that there are only a small number of energy brokers who understand the DCUSA well enough to raise these issues, therefore the figures are unlikely to be representative of the true scale of the issue.

3.29 Another member raised concerns that it will be passed on to the Supplier to rectify the issues as the customer will not be contacting the DNO.

Further Advice Sought from Gowling WLG (Gowling) on the Limitations Act

3.30 The group discussed the Limitations Act and agreed that further information from Gowling would be beneficial. The Chair agreed to contact Gowling asking the below questions.

- Can you provide a broader explanation on how the limitations act. In particular we would like to understand the provisions of bringing a claim (in terms of time periods) and the provisions for backdating a claim (in terms of backwards adjustments and refunds), and how these provisions interact with each other.
- How do these provisions affect/interact with the dispute resolution mechanism?
- The examples the working group have identified are (these are not exhaustive examples)
 - A scenario where a customer has told a Supplier/ of something (i.e. sent in a non final demand certificate) and this has not been acted upon within the 14 month window.
 - A change in the applicability of a specific tariff that the customer wasn't aware needed to be communicated to the supplier/distributor, but is being raised after 14 months.
 - A change in the applicability of a specific tariff, that is outside the customers control, that needs to be back dated more than 14 months.
 - A customer has found out that they were incorrectly charged in a period starting 4 years ago, ending 3 years ago, and hasn't had a refund and is bringing the claim now. What does the limitations act say should happen in this scenario.
 - Does this proposal affect that claim and would this be in line with the provisions of the limitations act?

3.31 The Chair agreed to ask Gus Wood from Gowling to attend the next meeting so this can be discussed.

Action 03/04 – The Chair to send WGs questions to Gowling and to ask Gus Wood to attend the next meeting to discuss.

Review of Questions to be Included in the Consultation

3.32 The group agreed to include the following questions in the consultation.

- Do you understand the intent of the change?
- Do you support the intent of the change?

- What is your experience of backdating DUoS tariffs in practice (what works well, what doesn't work well etc)?
- For Suppliers only - If you are no longer the Supplier for an MPAN, what is your process for back billing customers and refunding/debt collection? Do you follow the same process for COT customers?
- Are there any other industry codes that may be impacted by this change?
- If this change is not implemented, what are the potential impacts i.e. system constraints, additional manual intervention etc.
- Do you have any comments on the legal advice received on the Limitations Act?
- Do you have any comments on the drafted legal text? Including any additions and other clauses/schedules that could be impacted by this DCP?
- Do you consider the solution better facilitates the DCUSA objectives? Please give supporting reasons.
- Are you aware of any wider industry developments that may impact upon or be impacted by this CP?
- What date do you believe this change proposal should be implemented? Please provide rationale.
- Do you have any other comments?

4. Review/Update Work Plan

- 4.1 As per the actions taken during the meeting, the Chair agreed to contact Gowling with the Working Groups' questions, and to ask for representation at the next meeting. The Chair agreed to set up the next meeting once a response had been received with availability.

5. Any Other Business

- 5.1 No other business was raised.

New and Open Actions

Action Ref.	Action	Owner	Update
03/01	Secretariat to review the recording of the previous meeting to find discussion on why LV to HV should not be included in the table.	HP	New action. Post meeting note - the RFI questions were discussed at the first Working Group meeting on 08 May 2024 which was more than 15WD previous and therefore the recording is not available.
03/02	Members to remove irrelevant cases from 'other' column of question 2 and provide updated volume.	Members	New action.
03/03	The Chair to contact the Market-wide Half-Hourly Settlement (MHHS) Programme to see how they are approaching similar scenarios regarding backdating.	The Chair	New action.
03/04	The Chair to send WGs questions to Gowling and to ask Gus Wood to attend the next meeting to discuss.	The Chair	New action.

Closed Actions

Action Ref.		Update	
02/01	The Chair to draft a pre consultation RFI and issue to Distributors following the meeting.	The Chair	Action closed. RFI issued on 20 May 2024.