

## DCP 420 Working Group Meeting 10

28 August 2024 at 10:00 - Web-Conference

Attendee	Company
<b>Working Group Members</b>	
Simon Vicary	EDF
Ryan Farrell	NPg
Sally Musaka	SSE
Dan Simpson	ChargeUK
Donna Jamieson	IDCSL
David Wornell	National Grid
Harry Hailwood	Brook Green
Mark Bellman	ENWL
Mark Jones	SSE
Morven Hunter	Last Mile
Tony Collings	Ecotricity
John Harmer	WatersWye
Rustam Ellis-Majainah	Ovo
Louise Robinson	ESPUG
<b>Observers</b>	
Thomas Holderness	Ofgem
Tamara Satmarean	OZEV
<b>Apologies</b>	
Joe Boyle	SPEN
Edda Dirks	SSE Generation
<b>Code Administrator</b>	
Richard Colwill	Chair
Craig Booth	Secretariat
Anlysson Peña	Secretariat

## 1. Administration

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

## 2. Actions Review

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- 2.1 The Chair reviewed the actions.
- 2.2 The Chair explained that, as per actions 09/01 and 09/02, the Panel had been asked to approve the request for additional legal advice. The Panel had rejected the request, the reasons for which can be found in **attachment 1**. These actions have been closed.
- 2.3 A Working Group member highlighted that another member of the Working Group had sent an email about CUSC CMP 396 (Re-introduction of BSUoS on Interconnector Lead Parties). The Chair shared the email on his screen and explained that CMP 396 had received legal advice stating that it was likely to be unlawful. It had been rejected by Ofgem on the grounds that *“the Proposer chose to proceed, disregarding the legal advice and failing to seek its own legal counsel to validate the legality of the Proposal or submit a robust counter legal argument. This decision to continue with the Proposal highlights the importance of addressing legal matters upfront and has led to a waste of time and resources for numerous parties and unnecessary costs being incurred by the NGESO, which are ultimately passed to consumers, resulting in an avoidable negative impact”*.
- 2.4 The Chair noted that in contrast to CMP 396, the DCP 420 Working Group had not received any legal advice stating that it was unlawful. The Chair also noted that Ofgem’s feedback did appear to be directed to the Proposer of that CP, as they did not get their own legal advice.
- 2.5 A Working Group member felt that DCP 420 was different to CMP 396 as there was a very specific interpretation that the legal advice hinged on.
- 2.6 A Working Group member asked whether any of the solutions would potentially present no concerns around compliance with the EU regulation, citing the example of ring-fencing EV sites into their own group, which is not dissimilar to ring-fencing other groups (e.g., domestic, business, etc.).
- 2.7 A Working Group member asked if Ofgem would get its own legal advice, therefore negating the need to get additional legal advice via DCUSA. The Chair stated that any legal advice obtained would only be an opinion and that it was almost certain that Ofgem would seek its own legal advice. The member suggested that Ofgem could, based on getting its own legal advice, go against whatever the legal advice obtained by DCUSA would state, regardless of whether it was favourable or not.

- 2.8 The Ofgem observer stated that Ofgem needed to be presented with a complete picture of what was discussed in the Working Group and that the solutions are fully developed and can be understood by Ofgem.
- 2.9 A Working Group member stated that her understanding was that the feedback on CMP 396 was around the wasting of industry time. The Chair explained that even in the face of legal advice, the Proposer could disagree with this position and press ahead with the CP. The Chair noted that in that event, which CMP 396 demonstrated, obtaining the legal advice did not change the Proposer's stance. The Chair also noted that the query around the legality of CMP 396 was clearer cut, in that it sought to undo changes that were made to ensure compliance with EU regulation, whereas DCP 420 is not as clear cut.
- 2.10 A Working Group member felt that Ofgem's feedback on the letter was somewhat disingenuous, as the background was somewhat complex, laid against a backdrop of Brexit and a cost-of-living crisis. The member felt that it was quite right that, as Ofgem will get its own legal advice, it was not necessary to get more. The member stated that taking this forward was the right approach, but questioned the value of using industry time as, in his view, the DCUSA does not allow for charging customers differently in the way that is being proposed.
- 2.11 A Working Group member noted, as a Panel member, that one of the key parts of the decision was that any legal view would be caveated that it is an opinion, and that as the Authority and voting Parties would, or can, obtain their own legal advice, it did not feel efficient to use industry money to get legal advice that is still open to challenge.
- 2.12 The Working Group concluded that sufficient advice had been obtained and that all concerns would be fully articulated in the change report.

### 3. Purpose of the Meeting

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- 3.1 The Chair set out that the purpose of the meeting was to review to review the draft consultation and draft legal text.

### 4. Draft Consultation

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- 4.1 The Working Group reviewed the draft consultation.
- 4.2 A Working Group member asked why the solution proposed by Brook Green Supply was not in the table of solutions.
- 4.3 The Chair explained that the Brook Green Supply was largely on identifying the eligible customers and that a regulation had been identified which mandated that operators of EV charging sites make data available to network operators.
- 4.4 A Working Group member asked whether the criteria for identifying eligible sites had been determined. The Working Group reviewed [The Public Charge Point Regulations 2023](#) and discussed that there would need to be two additional considerations:
  - 4.4.1 that the MPAN would be needed; and

4.4.2 that the connection would need to be solely for the purpose of supplying EV charge points.

Action 10/01	The Chair to add additional paragraphs around the need to limit eligibility to connections that are solely for the purpose of supplying EV charge points.
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- 4.5 A Working Group member noted that, like non-final demand, the definition will need to cover electrically connected devices such as lighting, CCTV, etc., as long as the sole purpose of the site is to charge EVs.
- 4.6 The Ofgem observer asked whether the Working Group had explored any potential interactions with unmetered. The Working Group discussed that they did not believe these could be used for EV charging, as the usage has to be completely predictable. The Working Group discussed that whilst EVs may be charging off of some streetlights, these may be privately owned or would not be on an unmetered tariff. The Working Group also noted that, as per the nature of unmetered, it would not be possible to know what would be used, which would be a loss on the system.
- 4.7 A Working Group member recalled the question raised by Ofgem in its response to the Working Group asking the Working Group to consider around whether a CP would be appropriate platform or whether it would be better served by government initiatives, and whether this question should be asked of consultation respondents. The Chair agreed that it would be beneficial to include this in the consultation for information. Post-meeting, the Chair reflected on this and did not believe asking a question to be necessary, as there would be no actions for the Working Group to take off the back of the question.

Action 10/02	The Chair to add some paragraphs explaining the debate around the appropriateness of the CP versus other government support, including quoting verbatim the Ofgem feedback.
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- 4.8 A Working Group member noted that originally the CP stated it was to support non-viable sites and whether the criteria for this would be defined in the consultation and when this would be withdrawn. The Chair noted that the Working Group had discussed this previously and had determined it would be difficult to determine whether a site is viable or not and had decided to apply the solution to all eligible EV charging sites. The Chair also noted that a definitive end date, either per site or in its entirety, had been difficult to determine.
- 4.9 A Working Group member explained that introducing a cliff-edge would undermine the confidence needed by EV charging industry parties to install the infrastructure. The member noted that a proposal that looks towards paying costs on the unit cost is appealing as, as the sites become busier the support could phase itself out.
- 4.10 A Working Group member noted that a large DUoS SCR is on the horizon and issues like this may get caught up by that.
- 4.11 A Working Group member asked what analysis had been done on the volumetric approach and whether this resulted in the desired outcomes.

- 4.12 The Proposer stated that this would be a fixed pence per kilowatt hour and that being on the higher side of the banding would be beneficial to them under the TCR. The Proposer explains that the total residual would be divided by the sum of the total units, which would result in a pence per kilowatt hour.
- 4.13 The Proposer explained that this would be needed for HV, LV and LV Sub.
- 4.14 The Proposer produced an example model for option 3 and asked for a DNO colleague to check this, prior to circulation to the Working Group.

Action 10/03	The Secretariat to send the Proposer's new spreadsheet to Ryan Farrell.
Action 10/04	Ryan Farrell to check the spreadsheet against NPg's area.

- 4.15 The Working Group noted that, for options 2 and 3 specifically, forecasting would be more difficult for smaller groups of customers, as individual behaviour changes would result in a greater impact on the group, and are therefore harder to predict than larger groups of customers, where individual changes have lesser overall impact. The Working Group also noted that it is not possible to know how many sites would be included or what the ramp up profile of the sites would look like.
- 4.16 The Chair noted that under the DCP 412 solution, the customer was to be given the ability to opt out of the status. The Working Group discussed that this could introduce more volatility in the bands. The Working Group also noted that DCP 412 differs in that it is behaviour driven whereas this CP is driven by the type of consumer. ChargeUK noted that its preference was not for a solution whereby EV charging site operators choose between bands, but a solution that provides a benefit to all eligible sites.
- 4.17 The Working Group noted that the solution could be susceptible to gaming if customers were able to opt in and out of being in the new EV charging tariff group. The Working Group agreed to ask a question around this in the consultation.
- 4.18 The Ofgem observer asked if ChargeUK could be asked to assess if there was a preference of any of the above solutions. The ChargeUK representative stated that ChargeUK had held back on providing any preferences to date, to allow for industry to define workable options, and confirmed that it would be responding to the next draft circulation and to the consultation itself. ChargeUK did note that its preference would be a solution that provides the most predictability.
- 4.19 A Working Group member asked if there were any examples showing how the solutions in the table would work. The Chair noted that the legal text would need to be fully fleshed out and that this should lend itself to expanding the explanation in the consultation document. The Chair also noted that the analysis for options 2 and 3 would be included with the consultation.
- 4.20 A Working Group member suggested that classifying eligible sites as non-final demand was potentially not received well by other Working Group members as these sites are consuming and are therefore final demand. The member suggested moving these to a separate "no residual" group, whereby it is acknowledged that they are final demand sites, they are not subject to residual charges.

Action 10/05	The Chair to amend the original option in line with the suggestion in the above paragraph.
Action 10/06	The Chair to add additional explanations for each solution, based on the legal text and including the analysis (as an attachment).
Action 10/07	The Secretariat to arrange for time with the Proposer to work on the legal text for the solutions.
Action 10/08	The Chair to add a question to the consultation around whether the solution could be susceptible to gaming if customers were able to opt in and out of being in the new EV charging tariff group.

## 5. Draft Legal Text

- 5.1 The Working Group reviewed the draft legal text.
- 5.2 The Working Group noted that the legal text for option 1 would need to be changed, if the solution was to no longer include them in the definition of non-final demand.

## 6. Next Steps and Work Plan

- 6.1 The Secretariat will issue the draft consultation by 4 September 2024, with a deadline for Working Group comments by 11 September 2024.
- 6.2 The Secretariat will continue to develop the legal text and will reach out to Working Group members for support, as needed.
- 6.3 The Chair agreed to update the work plan once the consultation has been issued.
- 6.4 The next Working Group meeting will be on 17 September 2024 at 10:00 to 12:00.
- 6.5 The next agenda items will be to:
  - 6.5.1 review the draft consultation document; and
  - 6.5.2 review the draft legal text.

## 7. Any Other Business

- 7.1 No other business was raised.

## 8. Attachments

- 8.1 Attachment 1 - Panel Decision Regarding Additional Legal Advice

## New and Open Actions

Action Ref.	Action	Owner	Update
10/01	The Chair to add additional paragraphs around the need to limit eligibility to connections that are solely for the purpose of supplying EV charge points.	Chair	New action
10/02	The Chair to add some paragraphs explaining the debate around the appropriateness of the CP versus other government support, including the Ofgem feedback.	Chair	New action
10/03	The Secretariat to send the Proposer's new spreadsheet to Ryan Farrell.	Secretariat	New action
10/04	Ryan Farrell to check the spreadsheet against NPg's area.	Ryan Farrell	New action
10/05	The Chair to amend the original option in line with the suggestion in the above paragraph.	Chair	New action
10/06	The Chair to add additional explanations for each solution, based on the legal text and including the analysis (as an attachment).	Chair	New action



10/07	The Secretariat to arrange for time with the Proposer to work on the legal text for the solutions.	Secretariat	New action
10/08	The Chair to add a question to the consultation around whether the solution could be susceptible to gaming if customers were able to opt in and out of being in the new EV charging tariff group.	Chair	New action



## Closed Actions

Action Ref.			Update
02/01	Chair to share the links to the research papers with the Working Group.	Chair	Closed
02/03	Chair to follow-up the email sent by Pembrokeshire Council to see if other councils had been contacted.	Chair	Closed
02/04	Chair to draft the RFI question(s) and circulate to the WG for review.	Chair	Closed
02/05	GM to flag this CP to the TNUoS task force.	GM	Closed
04/01	The Chair to determine if a CUSC modification would be required based on the proposed solution above.	Chair	Closed
01/03	The proposer (DW) to contact the local council to see if they have other examples of EV charging sites where the fixed charges are currently making the sites unviable.	Proposer (DW)	Closed – lack of responses
04/02	The DNOs to check whether identifying and assessing the viability of these sites is something they could do.	DNOs	Closed
03/03	The Chair to update the DCP 420 Work Plan once more information has been gathered.	Chair	Closed

02/02	Chair to review the research papers.	Chair	Closed
05/02	Reach out to DESNZ to discuss the points raised by the Working Group.	Wesley Scott	Closed
05/03	Invite Charge UK to the next meeting and to check if they have, or can gather, views on the issues being faced by their members.	Chair	Closed
01/05	<p>MM to reach out to DESNZ, providing an overview of the issue raised in DCP 420 and seeking initial views on how best to address.</p> <p>DESNZ facilitated the OZEV view on DCP420 summarised within the email below. DESNZ are open to targeted discussions with Code Admin.</p>	Secretariat	Closed
03/02	<p>Ofgem to review whether this issue goes against the original intent TCR and whether it is now unintendedly setting price signals.</p> <p>The residual charges are not supposed to send signals for how the networks should be used and as a result in the TCR we concluded that residual charges will apply to Final Demand consumers only, and that they would take the form of fixed charges, levied on a per-site basis for all households and businesses.</p>	Ofgem	Closed

<p>In our TCR Decision and throughout the industry engagement activities we acknowledged that although the modelling used to support our TCR decision was conducted across the widest possible user archetypes, this list was finite and therefore Ofgem would be and are open to considering evidence where the TCR Decision is having unintended consequences and have invited industry to consider such cases and propose solutions to rectify them via the code modification process.</p> <p>DCP420 is one such mod which whilst identifying a potential unintended consequence of the TCR on a user archetype not captured within the TCR modelling, it goes on to propose a solution of ‘a change to the definition for certain EV charging sites from final demand site to non-final demand’, which raises concerns regarding fairness. We would recommend the WG consider (i) whether a code mod is the appropriate platform to resolve this issue or whether it would be better served by government support initiatives for this user archetype. (ii) If a code mod is the preferred solution for this issue, maybe explore the pros/cons of alternative solutions such as:-</p> <ul style="list-style-type: none"><li>• volumetric based reductions;</li></ul>		
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	<ul style="list-style-type: none"> <li>unmetered sites which do not pay standing or capacity charges and are only billed in volumetric terms</li> </ul>		
05/01	Reach out to GreenSync to understand how it validates EV chargers.	Harry Hailwood	Closed
08/01	Secretariat to review the Distribution License for net zero obligations.	Secretariat	Closed
08/02	Flesh out the additional option.	Dave Wornell	Closed
08/03	Draft the consultation and circulate to the Working Group.	Chair	Closed
09/01	Reach out to Gowlings for a cost and time estimate, to be taken to the Panel for approval.	Chair	New Action
09/02	Reach out to the Panel with Gowlings' cost estimate and the updated title and intent and confirm the outcome to the Working Group.	Chair	New Action