

Subject: RE: DCP 420 'Include Car Charging Stations' Legal Query [GOWLG-LEGAL02.588326.2758820]

From: Gowlings

Sent: Monday, June 10, 2024 11:56 AM

To: DCUSA

Subject: RE: DCP 420 'Include Car Charging Stations' Legal Query [GOWLG-LEGAL02.588326.2758820]

As discussed, I'm writing to briefly outline the position with respect to Article 18 of EU Regulation 2019/943 (as it applies in GB under UK law).

The Regulation applies directly as part of UK law. Compliance with the Regulation is also one of the relevant objectives which apply under DNO licences in respect of the use of system charging methodologies. Some of the other licence objectives overlap and duplicate the requirements of the Regulation.

For example, the relevant objectives of the CDCM (SLC13A) are:

- The first Relevant Objective is compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.
- The second Relevant Objective is that compliance with the CDCM facilitates the discharge by the licensee of the obligations imposed on it under the Act and by this licence.
- The third Relevant Objective is that compliance with the CDCM facilitates competition in the generation and supply of electricity and will not restrict, distort, or prevent competition in the transmission or distribution of electricity or in participation in the operation of an Interconnector.
- The fourth Relevant Objective is that compliance with the CDCM results in charges that, so far as is reasonably practicable after taking account of implementation costs, reflect the costs incurred, or reasonably expected to be incurred, by the licensee in its Distribution Business.
- The fifth Relevant Objective is that, so far as is consistent with the first four Relevant Objectives, The CDCM, so far as is reasonably practicable, should properly take account of developments in the licensee's Distribution Business.

I've set out the full text of article 18 of the Regulation below, but in summary, article 18 requires that charges for use of networks:

1. must be cost-reflective;
2. must be transparent;
3. must take into account the need for network security and flexibility;
4. must reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator;
5. must be applied in a non-discriminatory manner;
6. must not include unrelated costs supporting unrelated policy objectives;
7. where appropriate, can provide locational signals; and
8. may contain network connection capacity elements and may be differentiated based on system users' consumption profile.

It is right that the working group has identified the need to comply with article 18.

All changes to the charging methodologies need to take into account the requirements of the Regulation and the DNO licence objectives. There is some natural tension between some of the requirements of the Regulation (and of the DNO licence objectives), so it will be necessary to balance these appropriately.

The full text of article 18 of the Regulation (as it applies in GB under UK law) is as follows:

Article 18 Charges for access to networks, use of networks and reinforcement

1. Charges applied by network operators for access to networks, including charges for connection to the networks, charges for use of networks, and, where applicable, charges for related network reinforcements, shall be cost-reflective, transparent, take into account the need for network security and flexibility and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network

operator and are applied in a non-discriminatory manner. Those charges shall not include unrelated costs supporting unrelated policy objectives.

Without prejudice to Article 15(1) and (6) of Directive 2012/27/EU and the criteria in Annex XI to that Directive the method used to determine the network charges shall neutrally support overall system efficiency over the long run through price signals to customers and producers and in particular be applied in a way which does not discriminate positively or negatively between production connected at the distribution level and production connected at the transmission level. The network charges shall not discriminate either positively or negatively against energy storage or aggregation and shall not create disincentives for self-generation, self-consumption or for participation in demand response. Without prejudice to paragraph 3 of this Article, those charges shall not be distance-related.

2. Tariff methodologies shall reflect the fixed costs of transmission system operators and distribution system operators and shall provide appropriate incentives to transmission system operators and distribution system operators over both the short and long run, in order to increase efficiencies, including energy efficiency, to foster market integration and security of supply, to support efficient investments, to support related research activities, and to facilitate innovation in interest of consumers in areas such as digitalisation, flexibility services and interconnection.
3. Where appropriate, the level of the tariffs applied to producers or final customers, or both shall provide locational signals, and take into account the amount of network losses and congestion caused, and investment costs for infrastructure.
4. When setting the charges for network access, the following shall be taken into account: (a) [...]; (b) actual payments made and received as well as payments expected for future periods, estimated on the basis of previous periods.
5. Setting the charges for network access under this Article shall be without prejudice to charges resulting from congestion management referred to in Article 16.
6. There shall be no specific network charge on individual transactions for cross-zonal trading of electricity.
7. Distribution tariffs shall be cost-reflective taking into account the use of the distribution network by system users including active customers. Distribution tariffs may contain network connection capacity elements and may be differentiated based on system users' consumption or generation profiles. Where smart metering systems have been deployed, the regulatory authority shall consider time-differentiated network tariffs when fixing or approving transmission tariffs and distribution tariffs or their methodologies and, where appropriate, time-differentiated network tariffs may be introduced to reflect the use of the network, in a transparent, cost efficient and foreseeable way for the final customer.
8. Distribution tariff methodologies shall provide incentives to distribution system operators for the most cost-efficient operation and development of their networks including through the procurement of services. For that purpose regulatory authorities shall recognise relevant costs as eligible, shall include those costs in distribution tariffs, and may introduce performance targets in order to provide incentives to distribution system operators to increase efficiencies in their networks, including through energy efficiency, flexibility and the development of smart grids and intelligent metering systems.

8A ... [interpretation clauses.]

Gowling WLG (UK) LLP

From: DCUSA
Sent: Thursday, May 23, 2024 9:32 AM
To: Gowlings
Subject: DCP 420 'Include Car Charging Stations' Legal Query
Importance: High

The DCP 420 Working Group is working to define solutions that provide relief from standing charge pressures, as a result of the TCR, for some electric vehicle charging sites. The Working Group identified a concern in EU regulations that we felt would need your review.

The Working Group has identified four potential options to provide relief from standing charges:

- include EV charging sites in the definition of non-final demand;
- separate EV charging sites into a new group in which residual charges are based on forecast, which would result in smaller standing charges at present;
- set up EV charging sites in a separate group of tariffs where they are charged residual on their unit charges on a fixed pence per kWh; or
- move EV charging sites to the next lowest band, reducing their residual charges by one band.

As such, the relief will be provided by either removing all of the residual charges from, or reducing the residual charges applied to, these EV charging sites. This means that other users will of course see increases in their residual charges as a result.

The legislation in question is [EU2019/943](#) and the Working Group identified the specific paragraph below as the cause for concern:

SECTION 2

Network charges and congestion income

Article 18

Charges for access to networks, use of networks and reinforcement

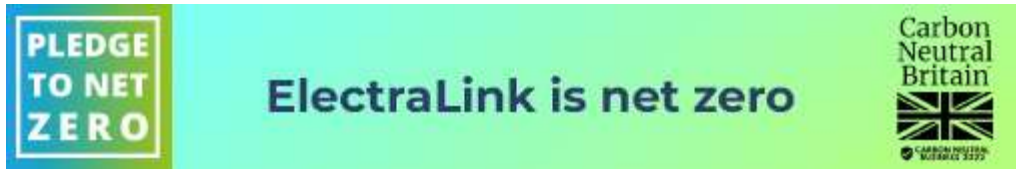
1. Charges applied by network operators for access to networks, including charges for connection to the networks, charges for use of networks, and, where applicable, charges for related network reinforcements, shall be cost-reflective, transparent, take into account the need for network security and flexibility and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and are applied in a non-discriminatory manner. Those charges shall not include unrelated costs supporting unrelated policy objectives.

The Change Proposal form and current consultation draft are attached, for further context as needed.

Please can you provide your views on:

1. whether you believe the concerns are warranted; and
2. whether you believe this prevents the Working Group from proposing these solutions.





This email and attachments (if any) must be swept for viruses before opening. Their contents may be confidential or privileged and are intended solely for the named recipient. If you are not the intended recipient and you have received this email in error you must not read or use this email and should notify the sender or ElectraLink Limited on: +44 (0) 20 7432 3000.

ElectraLink Limited is registered in England and Wales; company registration number 03271981, VAT registration number 698 2336 89. Registered address; 3rd Floor, Northumberland House, 303-306 High Holborn, London, WC1V 7JZ.

[ElectraLink Helpdesk](#) | [DCUSA Helpdesk](#)

The information in this email is intended only for the named recipient and may be privileged or confidential. If you are not the intended recipient please notify us immediately and do not copy, distribute or take action based on this email. If this email is marked 'personal' Gowling WLG is not liable in any way for its content. E-mails are susceptible to alteration. Gowling WLG shall not be liable for the message if altered, changed or falsified.

Gowling WLG (UK) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at <https://gowlingwlg.com/en/legal-information>

References to 'Gowling WLG' mean one or more members of Gowling WLG International Limited and /or any of their affiliated businesses as the context requires.

Gowling WLG (UK) LLP is registered in England and Wales as a Limited Liability Partnership, Registered No. OC304378. Registered Office: 4 More London Riverside, London, SE1 2AU. Gowling WLG (UK) LLP is authorised and regulated by the Solicitors Regulation Authority (www.sra.org.uk) (SRA number 382961). A list of members of Gowling WLG (UK) LLP is open to inspection at the registered office.

Gowling WLG has offices in Abu Dhabi, Beijing, Birmingham, Brussels, Calgary, Dubai, Frankfurt, Guangzhou, Hamilton, Leeds, London, Montreal, Munich, Ottawa, Paris, Shanghai, Singapore, Stuttgart, Toronto, Vancouver and Waterloo Region (Canada).