

## DCP 412 Working Group Meeting 34

2 September 2024 at 10:00 - Web-Conference

Attendee	Company
<b>Working Group Members</b>	
Edda Dirks	SSE Generation
Simon Vicary	EDF
Victoria Burkett	SSE
Lee Stone	E.ON
Dave Wornell	NGED
Nik Wills	Stark
James Jones	SSE
Ryan Farrell	NPg
David Fewings	Inenco
Kyran Hanks	WatersWye
Mark Bellman	ENWL
Karl Maryon	Drax
<b>Observers</b>	
Thomas Holderness	Ofgem
Iain McKie	Ofgem
<b>Code Administrator</b>	
Craig Booth	Secretariat
Richard Colwill	Chair
<b>Apologies</b>	
Diandra Orodan	BUUK
Joe Boyle	SPEN

## 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 upon the approval of these draft minutes, or after 60 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. Previous Meeting Minutes

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- 2.1 The Chair asked for any comments on the accuracy of the previous meeting minutes. No comments were recorded.

## 3. Open Actions

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- 3.1 The Chair noted that all outstanding actions had been completed by the production of the minutes, which had been written in a manner that the paragraphs could be utilised for the change report.

## 4. Purpose of the Meeting

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- 4.1 The Chair advised that the purpose of the meeting was to continue reviewing the consultation responses and agree necessary next steps.

## 5. Consultation Responses Review

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### **Band Based on Load Factor**

- 5.1 The Working Group discussed a proposal made by a customer in the consultation response, to band customers based on the Load Factor rather than the Maximum Import Capacity. The Working Group noted the customer’s statement that those with low Load Factors could benefit by being re-banded to a lower band, and that they had suggested a reduction from band 4 to band 3 would represent a 60% reduction in their charges.
- 5.2 The Working Group considered that to band customers based on Load Factor would require a rewrite of the TCR and the development of an entirely new methodology for setting TCR bands. The Working Group concluded that this would be a highly complicated exercise and would be out of scope of this CP.

### **Public Sector Services**

- 5.3 The Working Group noted a customer suggestion that public sector services could be treated differently to private sector services, and noted the impacts highlighted on taxpayers in the form of higher levies to cover the higher residual charges.

5.4 The Working Group discussed whether it was appropriate to treat different sectors, markets, industries, etc., differently and considered that this would amount to a complicated rulebook potentially requiring different approaches for any number of different sectors or organisations. The Working Group concluded that one uniform approach for all sectors was its preference.

**Price Control Review**

- 5.5 The Working Group further discussed whether customers should be required to re-apply for HCULU status or should retain this status at the commencement of each transmission price control period.
- 5.6 The Working Group discussed that, in the case of retaining HCULU status if the data shows the customer continues to be eligible, the data for the next price control period is assessed 14 months in advance of the price control period and is based on the previous 24 months of data, which is arguably nearly two years out of date by the time the price control period commences.
- 5.7 The Working Group considered whether HCULU eligibility, for retaining the status:
  - 5.7.1 should be performed at the same time the data is submitted for the next price control period (i.e., 14 months in advance); or
  - 5.7.2 should be performed closer to the commencement of the price control period, using more recent data.
- 5.8 The Working Group also considered what the process would look like in the event that the analysis is performed 14 months in advance of each price control period, and whether:
  - 5.8.1 the DNO would place the customer in the band according to their MIC, without taking into consideration their HCULU status; or
  - 5.8.2 the DNO would consider the customer’s HCULU status and place them in the band appropriate to that status (i.e., one band lower than the customer would otherwise have been banded).
- 5.9 The Proposer highlighted a competition concern, noting that the DNOs send the information on all MPANs to all Suppliers, but only the Supplier for each specific MPAN would be aware of the HCULU status, leading to advantages in pricing.
- 5.10 The Working Group considered that, if the review period was to be closer to the commencement of the next price control period, the timescales for doing this may need to be specified in the DCUSA, to ensure consistency across DNO areas.
- 5.11 The Working Group discussed that it would be useful to see some draft legal text, to better aid the discussions on how the approach would work.

Action 34/01	Secretariat to draft legal text drafts for three points and circulate to the Working Group: <ul style="list-style-type: none"> <li>• when the review of HCULU sites’ eligibility for the next transmission price control period should be (e.g., 14 months in advance or closer to the commencement of the price control period);</li> </ul>
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	<ul style="list-style-type: none"> <li>• if closer to the commencement of the price control period, whether the review be based on using the previous calendar year’s data; and</li> <li>• whether there should be a review window for the reviews to be conducted (e.g., from Jan to March prior to the price control period).</li> </ul>
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## Retrospective Re-banding

- 5.12 The Working Group noted the split views from respondents around whether there should be any retrospective elements of the proposal.
- 5.13 The Working Group discussed that the most contentious retrospective element of the proposal was intended to be a one-off exercise, to allow eligible customers who had experienced detriment under the TCR to be rebated for some or all of the detriment (e.g., 12 months or back to 1 April 2023) and that this would be subject to a sunset clause. The Working Group discussed that, as currently proposed, this would be for a six-month period following the implementation of the CP.
- 5.14 The Working Group agreed that the retrospectivity should not be an enduring option for existing customers and that those who don’t apply within the window will have, unfortunately, missed out on any potential rebates.
- 5.15 The Working Group discussed whether there were any precedents for retrospectivity of this kind. The Proposer noted that there had been proposal related to the charges for LVN (Low Voltage Network) and LVS (Low Voltage Switchgear) as a result of errors in distinguishing between the two, which resulted in retrospective claims for charges back to the implementation of the CDCM.

Action 34/02	Proposer to send examples of retrospectivity in other proposals (DCUSA or otherwise).
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- 5.16 The Working Group considered whether, in the case of DCP 412 and the potential low impact it would have, whether that would have any bearing on whether retrospectivity was appropriate. One Working Group member noted that whilst he did not agree with retrospectivity as a general principle, if this CP was accepted and it was concluded that these customers had indeed suffered a detriment as a result, that it would be only right that they be retrospectively rebated.
- 5.17 The Working Group discussed that any retrospective rebates could be backdated to a maximum of 12 months or, if evidence showed detriment, back to 1 April 2023. The Proposer noted that, assuming this was approved in 2025 and taking into account the potential 6-month transition period for retrospective rebates, that rebates could be for up to two years or more, if rebates went back to 1 April 2023.
- 5.18 A Working Group member highlighted a concern that the legal text for a transition period could result in a logjam of applications, if the maximum rebate was 12 months and depending on how the solution was developed. The Working Group member compared the two options:
- 5.18.1 that eligible customers would be eligible for a maximum rebate of 12 months from their application date; or

5.18.2 that eligible customers would be eligible for a maximum rebate of 12 months from the implementation date.

5.19 The Working Group member noted that in the first scenario, this could lead to a rush of applications, likely of poor quality, in order to secure the maximum rebate possible, contrary to the second scenario whereby customers would be rebated for the same period regardless of when they submitted their application, so long as this was within the transition period. It was also noted that backdating all eligible customers to 1 April 2023 would also avoid the potential logjam of applications.

*Post-meeting note: The Chair and Secretariat discussed the two scenarios identified under paragraphs 5.18.1 and 5.18.2 above, and noted that in the case of scenario two, for Working Group consideration, this could result in rebates of nearly 18 months (not 12 months) if customers delayed their applications to the end of the transition period (e.g., the CP is implemented 1 February 2025, the customer applies on 31 July 2025, and the customer is eligible for a rebate back to 1 February 2024.)*

5.20 The Chair agreed to draft legal text showing the two options for rebates.

Action 34/03	Secretariat to create first draft legal text for the scenarios under paragraphs 5.18.1 and 5.18.2.
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5.21 The Working Group discussed that to include retrospectivity for these customers:

5.21.1 would result in a complicated set of legal text;

5.21.2 could result in more volatility in charges; and

5.21.3 could be particularly divisive with Parties, making the difference between there being support for the CP or the CP being recommended for rejection.

5.22 The Chair proposed that the retrospective elements could be put to the Authority as additional options, in the form of ‘alternatives’, providing the Authority with three proposals:

5.22.1 including retrospectivity as a sunset clause, with up to 12 months maximum rebate;

5.22.2 including retrospectivity as a sunset clause, with a maximum rebate back to 1 April 2023;

5.22.3 including no retrospectivity.

5.23 The Chair explained that usually another Party is required to step forward with an alternative proposal, however there had previously been room for being pragmatic and allowing the Working Group to develop alternative solutions without the need for additional sponsoring Parties.

Action 34/04	Chair to check with Panel re submitting the DCP 412 change report with two alternatives without the need for additional sponsoring Parties.
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## Sites Lacking Sufficient Data

- 5.24 The Working Group discussed whether retrospectivity was appropriate for sites lacking 12 months of consecutive data.
- 5.25 A Working Group member suggested that to backdate to the date an application was made could be considered to not be retrospective, and that in this scenario the customer, having made an application, is asked to wait for sufficient data to be built to allow the assessment to take place and would be eligible for re-banding only from the date of their application, if successful.
- 5.26 A Working Group member highlighted a concern that there should be some discretion for DNOs to assess what constitutes 'complete data', as within a 12-month period there could be small gaps (e.g., de-energised for a few days for works) and it would be disingenuous to exclude these customers from applying.
- 5.27 The Working Group noted that no legal text for this had been drafted and that this would be necessary to further any discussions on it.

Action 34/05	Secretariat to create first draft legal text for sites lacking sufficient data.
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## 6. Work Plan

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- 6.1 The Chair stated that the work plan for this CP would be updated once the Working Group had concluded its review and all additional actions had been identified.

## 7. Next Steps

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- 7.1 The next meeting will be on 9 September 2024 at 14:00 to continue the review of the consultation responses.

## 8. Any Other Business

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- 8.1 No other business was raised.

## New and Open Actions

Action Ref.	Action	Owner	Update
34/01	<p>Draft legal text drafts for three points and circulate to the Working Group:</p> <ul style="list-style-type: none"> <li>• when the review of HCULU sites' eligibility for the next transmission price control period should be (e.g., 14 months in advance or closer to the commencement of the price control period);</li> <li>• if closer to the commencement of the price control period, whether the review be based on using the previous calendar year's data; and</li> <li>• whether there should be a review window for the reviews to be conducted (e.g., from Jan to March prior to the price control period).</li> </ul>	Secretariat	New action
34/02	Send examples of retrospectivity in other proposals (DCUSA or otherwise).	Proposer	New action
34/03	Create first draft legal text for the scenarios under paragraphs 5.18.1 and 5.18.2.	Secretariat	New action
34/04	Check with Panel re submitting the DCP 412 change report with two alternatives without the need for additional sponsoring Parties.	Chair	New action
34/05	Create first draft legal text for sites lacking sufficient data.	Secretariat	New action

## Closed Actions

Action Ref.	Action	Owner	Update
11/02	The Secretariat to reach out to DNOs to see if they have experienced any cases where there may be a potential blocker to net zero (in relation to DCP 420)	Chair	Closed. No update as of yet. Working Group agreed that this can be picked up as part of the Action list for DCP 420 as opposed to DCP 412.
11/03	The Chair to respond to Ofgem to state that due to confidentiality risks of DNOs, the Working Group would prefer to state the impacts of this CP on TNUoS Customers only (not DUoS)	Chair	Closed. Ofgem agreed that the analysis should be completed.
12/01	LS to provide a proposers view of the impacted DUCSA objectives	Lee Stone	Closed. The Consultation document has been updated accordingly.
12/02	The Chair to share the panels steer on when to assess CPs against charging objectives, general objectives, or both	Chair	Closed. This was circulated to the Working Group.
12/03	The Chair to share updated versions of the legal text and consultation document prior to the next meeting	Chair	Closed. This was circulated to the Working Group.
14/04	The Chair to seek clarification on Ofgem's decision criteria based on the urgency status of the change.	Chair	Closed
10/01	Request half hourly data for the 95% threshold customers from DNOs to allow an assessment of how the bands change based on average daily or monthly maximum demand	Chair	Closed. Complete data set has now been received by all DNOs. Analysis has started, and the number of



			Customers within the 95% threshold for 2022 has increased.
10/02	Perform the same analysis on the customer data provided in action 10/01 above.	MC	Closed. Complete data set has now been received by all DNOs. Analysis has started, and the number of Customers within the 95% threshold for 2022 has increased.
10/03	Show the reduction in DNO income.	MC	Closed. Complete data set has now been received by all DNOs. Analysis has started, and the number of Customers within the 95% threshold for 2022 has increased.
11/06	LS to seek further information around the Distribution Licence in relation to DCUSA Objective 1.	Lee Stone	Closed. No update as of yet.
11/07	The Chair to seek further understanding of where customer fairness fits in, in relation to the DCUSA Objective	Chair	Closed. Internal view is that this is not a DCUSA issue to fix and is a licence issue. The Chair will discuss with Ofgem that they may want to look at this in the future.
14/01	The Chair to transfer the current Action 11/02 in DCP 412 action log over to the DCP 420 action log.	Chair	Closed
14/02	The Working Group to review paragraphs 6.4H (option 1 and option 2) and make a decision as to whether this should be removed from the draft legal text during the next meeting on 25 July 2023.	Working Group	Closed

14/03	The Chair to make a visual of the examples for the better understanding for the reader – once added within the Consultation document, the original written examples can be deleted.	Chair	Closed
17/01	Working Group members to share the illustrations with colleagues who hadn't had visibility of DCP 412 to check the made sense	All	Closed
18/01	Add definition of HCULU customer in consultation 2.	Chair	Closed
18/02	Simplify how the retrospective treatment process and reassessment process is explained with the consultation document	Chair	Closed
19/01	MC to review and update the paragraph that deals with shared capacity and the forward-looking access SCRs	Matt Cullen	Closed
19/02	MC to check in with LS on what the obligations are on suppliers to return any financial benefits received from distributors back to customers.	Matt Cullen	Closed
19/03	RF to report back to the Working Group on the outcome of a call taking place after this Working Group discussing how financial benefits are returned to customers and what obligations are in place to make sure customers receive the benefits.	Ryan Farrell	Closed
20/02	The Chair to map the processes as they currently stand for presentation at a future Working Group meeting.	Chair	Closed
20/03	BO to map the scenarios he has identified for the enduring retrospective re-banding.	BO	Closed
20/04	Chair to review the data and determine the number of customers that changed from year 1 to year 2.	Chair	Closed
21/05	Chair to share the council responses with the Chair of DCP 420.	Chair	Closed
22/01	Chair to contact respondent and clarify if they would be happy to have their response published in an anonymised form.	Chair	Closed

21/01	Chair to contact respondent to seek clarification on the two responses received.	Chair	Closed
23/01	Chair to update the minutes of meeting 22 to add a reference to the aforementioned documents.	Chair	Closed
26/02	MC to undertake additional analysis to understand the cost impact on other customers if the threshold is lowered (i.e 90%, 85%, 80%).	MC	Closed
27/01	Proposer to provide their current thinking on preferred approach.	MC/ LS	Closed
20/01	Working Group to consider questions it would like Ofgem to consider (this action will remain on hold until after the review of consultation 1 responses has been completed.)	Working Group	Closed
21/02	Working Group to consider what additional analysis is required after the consultation 1 responses review is completed.	Working Group	Closed
21/03	Working Group to discuss additional re-banding considerations after the consultation 1 responses review is completed.	Working Group	Closed
21/04	Chair to add the split criteria to the analysis as variables.	Chair	Closed
21A/01	Chair to locate or create a 'statement of facts' document that concisely summarises the principles and decisions implemented under the TCR.	Chair	Closed
21A/02	Working Group to add clarification/justification for how customers become eligible for HCULU status and for spreading the remaining residual charges over other customers.	Working Group	Closed
22/02	Chair to facilitate the expansion of the impact assessment to cover customers who exceed their MIC by 5% and 10% respectively.	Chair	Closed
26/01	Working Group to conclude on how customers who have exceeded their MIC will be treated.	All	Closed
26/02	MC to draft a process for how this second step (DNO discretion) could work.	MC	Closed

28/01	Produce legal text based on proposer's preferred approach.	LS	Closed
28/02	Update consultation document in relation to discussions to date.	Secretariat	Closed
30/01	Take change of intent to Panel and ask Panel to consider whether the change of intent is necessary.	Chair	Closed
31/01	Secretariat to update the title and intent of the CP on the DCUSA website.	Secretariat	Closed
31/02	Secretariat to add a paragraph to the consultation to explain the change of title and intent (as paragraph 1.2)	Secretariat	Closed
31/03	Secretariat to update the consultation to summarise the issue.	Secretariat	Closed
31/04	Secretariat to add a question to the consultation around the customer being able to opt out.	Secretariat	Closed
31/05	Secretariat to review the consultation to ensure definitions are in the correct place in the document.	Secretariat	Closed
31/06	Secretariat to update the consultation to expand on the explanation for the two-part process.	Secretariat	Closed
31/07	Secretariat to update the draft legal text.	Secretariat	Closed
31/08	Secretariat to add the summary of the issue around customers paying higher charges in the lower band.	Secretariat	Closed
31/09	Secretariat to add outcome of the above conversation in the consultation and add a question around 5.16 above.	Secretariat	Closed
31/10	Secretariat to add clarification around the impact to TNUoS charges as a result of the current proposed solution to re-band HCULU customers.	Secretariat	Closed
32/01	Secretariat to book in meeting to review analysis with Matt Cullen.	Secretariat	Closed