

# DCF DUoSA (consolidation) Sub Group

## Minutes

Wednesday 27 April 2005; 10.30am

Ofgem Offices, 9 Millbank, London SW1P 3GE

### Attendees

David Edward (DE) – Ofgem  
[David.Edward@ofgem.gov.uk](mailto:David.Edward@ofgem.gov.uk)

John Hill (JH) – Central Networks  
[John.Hill@central-networks.co.uk](mailto:John.Hill@central-networks.co.uk)

Steve Wilkin (SW) – Elexon  
[Steve.wilkin@elexon.co.uk](mailto:Steve.wilkin@elexon.co.uk)

Mark Field (MF) – npower  
[mark.field@npower.com](mailto:mark.field@npower.com)

David Lane (DT) – Clear Energy/Cornwall Consulting  
[David@clearenergy.co.uk](mailto:David@clearenergy.co.uk)

Mark Manley – Centrica  
[mark.manley@centrica.co.uk](mailto:mark.manley@centrica.co.uk)

David Tolley (DT) – RWE npower  
[david.tolley@rwenpower.com](mailto:david.tolley@rwenpower.com)

Chris Allanson (CA) NEDL YEDL  
[chris.allanson@ce-electricuk.com](mailto:chris.allanson@ce-electricuk.com)

Steve Mackay (SM) – Ofgem  
[Steve.Mackay@ofgem.gov.uk](mailto:Steve.Mackay@ofgem.gov.uk)

Clover Powell (CP) – Ofgem  
[Clover.Powell@ofgem.gov.uk](mailto:Clover.Powell@ofgem.gov.uk)

Bill Gunshon (BG) – npower  
[Bill.Gunshon@npower.com](mailto:Bill.Gunshon@npower.com)

Jill Ashby (JA) – Gemserv  
[jill.ashby@gemserv.co.uk](mailto:jill.ashby@gemserv.co.uk)

Roger Barnard (RB) – EDF Energy  
[roger.barnard@edfenergy.com](mailto:roger.barnard@edfenergy.com)

Mike Harding (MH) Laing Energy  
[mharding1@laingorourke.com](mailto:mharding1@laingorourke.com)

### Apologies

Louise Boland (Opus Energy)  
[Louise.boland@opusenergy.com](mailto:Louise.boland@opusenergy.com)

Mike Boxall (UU)  
[mike.boxall@uuplc.co.uk](mailto:mike.boxall@uuplc.co.uk)

## **Opening remarks**

DE opened the meeting, commenting that in light of suggestions it may be appropriate to change the name of the Group from the Overarching group to that of the Consolidation group. This was agreed. The minutes of the last meeting were formally approved.

RB asked what the mandate for the newly named consolidation group was and whether it could be clarified what the terms of reference (ToR) were.

DE suggested that the ToR might be considered implicit in the title.

RB commented that the ToR could not be considered implicit until a licence modification to develop a document was proposed.

DE noted that responses to previous consultations had expressed consolidation was desirable and that the base content should be the existing DUoSAs. He suggested this view could be considered to give something akin to the mandate to infer a ToR.

RB considered that mainly developing a document would be an exercise in legal drafting.

DE suggested that this may not be a particularly onerous burden given that a great deal of the existing DUoSA might be used to form the content of the document.

RB was not wholly in agreement and recalled that when the CUSC was developed significant legal drafting was required.

SM noted that other subgroups to the DCF dealing with consolidation issues were attempting to develop a set of terms which could be considered commercially viable as a first step, with a view to requisitioning legal support at a later date. He suggested that the consolidation group might be able to work along similar lines for the time being.

MH noted his concern that nebulous issues needed to be distilled into clear deliverables. He considered a timetable was required.

DE commented that what Ofgem could offer in terms of a set timetable on that day could only be tentative due to the need to finalise internal discussions on the issue. He commented that responses to the December consultation indicated there was a desire to have a document in place next year and considered that in order to allow this it was necessary to develop a consolidated document which could be sent to lawyers by the end of the year. He considered that in terms of content the base content should be the DUoSAs and if parties could agree on any additional content Ofgem would consider its inclusion.

RB repeated his desire to see ToR in place to encourage matters to be agreed.

DE noted that the issue of developing ToR was in line with the next agenda item of the selection of the chair. He informed the group that Ofgem wished to install an industry chair and that it may be more appropriate for the ToR to be agreed under such an individual.

BG moved to propose MH as chair of the consolidation group. RB seconded this proposal.

MH accepted the chairing role and noted that he was aware industry groups had the capacity to take a life of their own and was keen clear objectives and tasks should be agreed, and that the deliverables of the group should be developed along tightly defined timescales.

RB commented his expectation that DNOs would be paying for the work being done and reiterated his point that this would involve a significant amount of legal drafting.

DE agreed that some legal drafting would be required.

BG asked what code could be considered a precedent for the development of the DCUSC and the work which might be expected.

RB commented that there was no similar case as, for example, the BSC was produced as a result of legislation, whilst the MRA was a product of market restructuring. He considered that there was no such driver for DCUSC and this increased the need for a CLM.

DE commented that Ofgem would be discussing this issue internally and report in due course.

DE asked MH to take the meeting forward.

BG asked that MH may wish to consider someone as his alternate.

MH noted that if someone wished to volunteer as chair then he would be happy to hear from them, but would not expect responses immediately in order to allow those interested to check their availability with their respective companies.

DE regretted that although Ofgem had hoped to report on issues relating to site-specific matters in Scotland he was not in a position to do so at this time.

RB commented he did not consider the resolution of this matter to be a major issue at that time.

### **Developing consolidation**

DE suggested that it may be sensible to identify quick wins for a consolidated document. He noted that certain sections had been set out for discussion in the agenda.

BG suggested that it may be worthwhile running through these sections to ensure people were clear what was being agreed to.

### **Section 1 – Definition and Interpretations**

DE asked if any of these terms had become obsolete. There was a general feeling that this was the case and that this could be picked up in a sub-committee which would be tasked to highlight those issues.

## Section 2 – Conditions Precedent

DT noted that there may be differing interpretations of what was meant by conditions precedent as this tended to vary between different codes.

RB noted this was concerned with how the code is structured and that it may be appropriate to apply Distribution Code governance to this area.

DE said he was aware this would be in keeping with RBs desire for unified governance, but noted that this option had not been mooted at previous meetings and it would be a departure to introduce this formally at this late stage. He also noted that this was a valid option and that RB may wish to offer this option in his response to the Ofgem Impact Assessment which would be issued in the coming days.

DT noted that in his view this suggestion may be ideal but could also be somewhat radical.

DL noted that this may be easier than experience suggests as there is nothing in place at present, which would enable the comparatively easy introduction of this type of governance structure.

RB considered that this option should be considered.

MH considered this a point worthy of discussion however he also noted there was only a minority of DNOs around the table at that time and that his main concern was to deliver something that would receive industry support. He considered that the group should not try to do too much. He did consider this point of worthy of being considered at a later date when more DNOs were on board and suggested that this point should be included in an issues log.

RB commented that he saw no reason why the DCUSC should not be the primary code into which the Distribution Code and other documents could be incorporated.

DE asked if the objectives on which the development of the DCUSC were being assessed would be suitable for assessing and progressing the development of such a document because a unified document would involve both technical and commercial considerations.

BG also noted that there may be similar concerns relating to technology and safety.

RB considered the obligations on licensees to satisfy competition in the generation and supply of electricity were enough to allow this assessment to be carried out.

MF asked if RB would draft a note on his suggestion. RB responded that he would do so.

DE commented that the discussion was straying into the territory of the Ofgem Impact Assessment which focussed on the governance of the document, rather than focusing on its terms, the consolidation of which was the primary purpose of the group.

MH noted that there was nothing to stop a new code being developed if this was the will of parties. He highlighted that this issue could take up a great deal of time and

what was needed was consultation with the DNOs and that this might be worth considering at a future COG meeting.

It was subsequently suggested this section could be considered by a subgroup.

### Section 3 Supply Contracts

The group noted that section 3 was being considered by a sub-group.

### Section 4 Use of System

DE asked if there was anything to be said in relation to this section before it could be agreed, other than the issues covered in the last meeting.

MH noted that UoS requirements may need to differ according to the classes of parties to which they were applied. He suggested that the question of whether the model DUOSA could apply equally to all parties should be recorded on the issues list.

MM recalled that at the last meeting it was expected a document could be put in place and then modifications raised against it to finesse the content. He questioned whether the content of the discussions being undertaken at the meeting might mean it would be necessary to delay the date for the production of a consolidated document.

DE noted that the aim should be to produce a document, and that it was likely the document which was arrived at would not be the optimum possible document. He agreed with MM that it was necessary to set a date for completion in order to focus the minds of the group.

MM considered a set date for completion of the project should be an integral part of any CLM brought forward.

MH agreed that a set date was essential.

SM asked the group whether, in the absence of and until a CLM was brought about, the group would be able to agree a date between themselves in order to provide the impetus to make real progress.

RB considered that the end of the year would be a viable date to have developed a final consolidated document, although he noted that this document would still need to be approved by the Authority and implemented which would require more time.

MH considered it was difficult to specify a date when the group had not defined the key issues and tasks.

DT asked what is the key issue.

DE responded that the key issue was that a consolidated document needed to be produced.

### Section 5 Commencement and Duration

DT considered chapter 5 was an example of a section which he felt may contain development issues which could slow the process of consolidation.

BG noted that the template document may only address Supplier-DNO issues and may not cover relationships between IDNOs and DNOs or the relationship between micro-generation and other parties.

DE noted that for the time being the group could consolidate the sections relating to Supplier-DNO issues and when this had been completed they could work toward covering any other relationships which were considered necessary but not addressed in the template document.

MH noted that the group should not get bogged down in technical/commercial issues at this stage and should focus on getting something in place.

#### Sections 6-8

DT asked why sections 6-8 did not appear on the agenda as items for agreement.

DE clarified that this was because these issues were being dealt with by other workstreams of the DCUSC project. He clarified that the sections listed on the agenda were ones which Ofgem anticipated would be easily agreed.

MH noted that it may be necessary to include a section between 8 and 9 regarding payment for transactional charges.

RB commented that in 1998 these charges had been bundled as DUoS charges.

CP suggested that since they were included in DNOs' SLC4A statements, they would probably be classed as DUoS charges.

DT noted that other elements of the charging arrangements address how the charge is set and what it is. He considered that it may be appropriate for the consolidated document to say how the charge is paid.

CP noted that payment terms are mentioned in the template DUoSA.

MH noted that payment terms are also mentioned in the MRA and that as such it would be important not to introduce any ambiguity to the arrangements in developing the DCUSC.

It was agreed that transactional charges should be included on the issues register.

Mindful of time constraints, DE suggested that the discussions on specific sections should be agreed. He noted that specific work need to be done on sections 3,6, and 8. And that other than the sections highlighted as suitable for being developed by a subgroup (sections 1 and 2), the others considered today could be considered largely suitable.

RB asked if limitation of liability under section 8 was likely to come under the scrutiny of the regulator, and urged that it should not.

DE responded that it was not possible for Ofgem to definitively state at that juncture that the regulator would not wish to consider altering the limitation of liability clauses.

MH considered that the working assumption of the group should be that this issue was not within the scope of the group to review unless Ofgem indicated otherwise.

DE commented that Ofgem would only seek to introduce necessary changes.

#### Dispute Resolution in DUoSAs

BG presented a paper on this subject and commented that an action had been placed on participants to consider whether they agreed with assessments made in this area.

MH and BG noted that different types of dispute and materiality may require difference DR solutions.

DT stressed that Ofgem's role in any DR process would relate to enlightening parties about relevant public policy issues rather than determining disputes.

MM asked whether these industry DR sessions would be in open or closed session. He noted that similar bodies met in closed session on the BSC due to commercial sensitivity.

RB considered that the reason for this is that the BSC operates in a genuinely competitive environment.

DE agreed noting that commercial issues tend to lead to a presumption of confidentiality.

DT commented that the BSC is about the settlement of money and this is an environment in which will give rise to a different type of dispute.

RB added that the nature of the DCUSC as a document where one set of counterparties were monopoly organisations may mean that the same confidentiality concerns do not arise.

MH considered that the question of confidentiality could be recorded on this issues register.

#### COG

DE asked if anyone could give an update on recent developments of the COG.

JH responded that Wragge&Co is looking at what the impacts of DG might be. He commented that the detail of the drafting should be picked up at the next meeting and he would report back to the DCF and overarching group on this issue.

#### Credit Cover

DE informed the group that although Louise Boland was unable to attend today he could update the group that Ofgem would be publishing a clarificatory note to its credit cover conclusions document in the form of an open letter.

RB asked if the clarificatory note would give those working on the DCUSC project clarity vis-à-vis the drafting of the document.

MH Noted that the aspect he was concerned about was how the 1-10 rating described by Ofgem would be translated into a credit rating applicable within the context of the document.

#### Next Steps

RB asked if a CLM would be brought forward to give impetus to the work being undertaken by the group, in particular because this would give the vires for the group to develop the document and incur the necessary expenditure in doing so.

The overwhelming view of the group was that a CLM was required. The following reasons were given:

- ◆ Not all DNOs are represented on the group – this is concerning. A CLM is needed to ensure all the distributors are involved in the development work.
- ◆ Until a CLM is approved it is questionable whether the group has the authority to develop any ToRs or associated timescale – the mandate of industry is needed.
- ◆ Without a CLM the project may take 3/4 years to complete.
- ◆ If not obligated to do the work people will do it as and when it suits them. Past experience of other documents agrees with the 3/4 year timescale.
- ◆ Having no firm delivery work will get in the way of producing a document.
- ◆ If there is no date toward which people have to work everything will develop in a timely fashion until the interests of one of the key players are potentially compromised. At this point work will slow dramatically and possibly even stop. The only way to ensure agreement and progress is by way of a licence condition requiring a document to be in place by a certain date.
- ◆ It can not be supposed that the other codes which have been put in place in recent years are precedent for not needing a CLM in this case. The BSC was introduced as a requirement of legislation whilst the MRA came around as a result of essential market restructuring. There is no such driver for DCUSC. Without a licence requirement there is no reason to believe that the document will be developed.
- ◆ Light touch regulation is welcome in contexts where competition is well established and Ofgem is progressing towards this type of regulation. However, Ofgem does not have a history of light touch regulation in the



context of the regulation of monopolies. Here we are dealing with monopoly networks – and Ofgem needs to ensure in this case that there are sufficient obligations on parties to deliver/take part in the process.

- ◆ At the moment this project is not high enough on peoples 'to do' list to get the required work done within years of the timescales laid down. A CLM will raise the profile of this issue in companies, and give an incentive to senior management to allow resource to be committed to the project. Without a CLM management will question the value of the project, as particularly noted by npower, they may not be willing to support it any longer.

The group agreed to reconvene on 19 May at 10.00am in Ofgem's offices.

It was agreed that a list of contract managers at the relevant companies would be sent to SM who would ensure this list reached the relevant parties.

It was agreed the Chairman's details (MH) would be circulated.