DCF DUoSA (consolidation) Sub Group

Draft Minutes

Monday 21 March 2005; 10.30am

Ofgem Offices, 9 Millbank, London SW1P 3GE

Attendees

David Edward (DE) – Ofgem
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Steve Wilkin (SW) – Elexon
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David Lane – Clear Energy/Cornwall Consulting
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John Hill (JH) – Central Networks
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Andy Jenkins – CE Electric
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Mark Manley – Centrica
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David Tolley – RWEnpower
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Clover Powell – Ofgem
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Jill Ashby – Gemserv
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Apologies

Simon Brooke – United Utilities
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Roger Barnard
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DE opened the meeting, stating that following on from some responses to the December consultation, which indicated that the project might lose impetus if Ofgem failed to promote discussions, one aim of the meeting could be to gauge to what extent the existing company DUoSA agreements diverged from each other. He also suggested that an aim of the group could also be to produce a consolidated document that could be used as the starting content for any centralised arrangements.

DE suggested the best way to proceed could be to work through the DUoSA template document sent out with the invitation, section by section, and individuals could comment if they considered there to be any issues that needed resolving.

Section 1 – Definitions and Interpretations

Not considered

Section 2 – Conditions Precedent

No comment

Section 3 – Supply Contracts

BG stated that npower had serious concerns about 3.6 of this section.

DT pointed out that clause 3.6 required Suppliers to comply with any relevant changes put forward by DNO's. He considered it to be unpractical and inequitable from a Suppliers perspective.

DE asked if clause 3.6 had been the subject of a determination. No one considered it had.

RS explained the history behind clause 3, stating that it was included in 1998 when there were no standard connection agreements in place and when DNO's were precluded from dealing with customers directly. He stated that suggested new drafting had been sent to suppliers but that to date, suppliers had not provided any form of comment on it.

DE pointed out that if an appropriate governance mechanism was in place then changes could be introduced in a transparent and inclusive manner.

JH mentioned there had previously been much debate over clause 3.6 and that the Ofgem representatives that had taken part in discussions were Colin Green and Carl Hetherington.

The group recognised that clause 3 and particularly clause 3.6 would require further detailed consideration.

Action: Npower to provide suggested new drafting of section 3 after more focussed discussion of the issues. Invitation to the discussions would be open to all.

Section 4 – Use of System

SW pointed out that references to ERS would need to be deleted.

Section 5 – Commencement and Duration

No comment

Section 6 - Charges

DE commented that in the CUSC arrangements, the obligation to pay charges reside in the CUSC but the methodology lies elsewhere, in the charging statements. He enquired whether it might be appropriate for the distribution sector to have similar arrangements.

The general consensus was that it would be appropriate to have similar arrangements in the distribution sector.

However DT suggested the procedural aspects of the charging regime should be contained within the Document.

RS pointed out that presently the procedures sit within the DNO Licence.

It was agreed that any procedural elements would duplicate the relevant conditions of the License and that if some of these provisions were in the Document it would provide greater visibility and transparency to all parties.

DT pointed out that presently within section 6 there is no procedure to resolve disputes if a party considers that charges have not been calculated in accordance with a Condition 4 Statement. He suggested it may be appropriate to have such a procedure in the Document. MM questioned if the sort of procedure he was referring to would be similar to the TDC type process in the BSC. It was generally agreed that this type of procedure may be an option but there may be other processes that could also work effectively.

JH noted that under Clause 6 - Charges, Clause 6.2 describes a mechanism for dealing with under/over charging.

JA pointed out that dispute resolution was linked with the governance arrangements which would provide a method of dispute resolution.

AJ suggested that there was a separate dispute resolution section with in the agreement and may be more appropriate to have all dispute resolution elements in one section.

JA commented that the underlying ethos of any proposed DR process should be for disputing parties to attempt to resolve their differences by negotiation prior to using formal dispute mechanisms. If resolution could not be arrived at through negotiation the next step in the escalation process could be to move to some form of mediation and then as a last resort to move for decision by an appropriately constituted body such as a Panel or Ofgem.

It was acknowledged that the experience of the companies represented round the table was that in the majority of cases agreement was usually arrived at via negotiation between the parties.

DG suggested that dispute resolution for the Document should be highlighted as a topic for more detailed consideration and that the equivalent of section 6 in the document should cross reference a dispute resolution process.

Section 7 & 8 – Billing and payment by Settlement Class / Site Specific Billing and Payment

RS pointed out that sections 7 & 8 would need to be redrafted to reflect the Credit Cover Proposals. These proposals are being considered in detail by the Credit Cover group and changes to sections 7 & 8 would be mentioned to them.

Section 9 – Limitation of Liability

No comment

Section 10 – Energisation, De-Energisation and Re-Energisation

RS pointed out that this section attempted to cover all the issues in relation to energisation and as a consequence was not very easy to follow. It might be appropriate to shorten the section and provide a lot of the detail within a schedule.

DT asked if it would be appropriate to have provisions relating to Urgent Metering Services within clause 10, or would they be more appropriate to be considered within schedule 14.

AJ considered schedule 14 would be the most appropriate place.

JH pointed out to the meeting that UMetS could either form part of the DUoSA as Schedule 14 or a "stand alone" contract and that this was a supplier/distributor matter

Some parties observed the discussions showed how unsatisfactory some of the current set of terms and conditions were and that potential drafting of a consolidated document could take some effort.

DE commented that although certain sections of the DUoSA might seem sub optimal insofar as they were still workable, there may be no need for redrafting at this stage. He suggested parties might want to adopt the test used in implementing BETTA whereby only changes strictly necessary for the introduction of BETTA were made to the existing documents. He suggested that if a consolidated document with governance arrangements was developed then parties may avail themselves of the change mechanisms to modifiy terms and conditions that were less than ideal.

DL agreed with this and suggested the group should adopt a general workability test when consolidating the documents. He said that if the group considered the text of the current drafting achieves its intended purpose then, even if it may not be considered to be the most satisfactory drafting, it should be adopted into a new consolidated document, only if the current drafting is unworkable should a concerted effort be made to produce new drafting.

Section 11 – Compliance with the Distribution Code

DE stated that it might be prudent to monitor the on-going debate surrounding the delineation of what is transmission generation and what constitutes distributed generation and with this in mind, subject to the workability test above, it may be appropriate to consider inserting obligations to comply with the CUSC here.

DL mentioned such obligations may fit more appropriately in the bi-lateral connection agreement.

Section 12 – Metering Data and Metering Equipment

It was observed that this section would need to be redrafted to take account of the growth in distributed generation.

SM noted that this aspect was being considered by the Commercial Operations Group, who had agreed to report back to the Distribution Commercial Forum.

One party observed that the history of the DUoSA is such that it is generally supplier-orientated and parties may want to provide a corrective element so as to take into account the participation of DG.

Section 13 – Provision of Information

No comment

Section 14 – Demand Control

DT asked for clarification on the purpose of section 14.

RS and JH pointed out that it allowed Network Operators to designate certain parts of a network as Load Managed Area so that in that area, the supplier could not supply in excess of the Load stipulated by the DNO. Such areas would usually be designated in areas where the Network was not robust enough and required reinforcement works.

Section 15 – Revenue Protection

DT commented that transactional services were outside regulated income.

BG mentioned that a consultation in this area was ongoing and was likely to lead to significant changes.

Section 16 – Guaranteed Performance Standards

John Hill mentioned that guaranteed performance standards were also provided in License Condition 20.

JH pointed out that payments in relation to a DNO's performance was a Licence obligation and that DUoSA's reflected a DNO's obligations on this matter.

Section 17 - Variations

DE pointed out that Ofgem were going to issue an IA on the different forms of governance in early April which would allow industry to indicate which form of governance they most preferred.

Section 18 - Termination

It was observed that this section would need to reflect the final Credit Cover proposals.

Sections 19, 20 & 21 – Force Majeure /Confidentiality Restrictions on the Company / Confidentiality Restrictions on the User

No Comment

Section 22 - Disputes

It was acknowledged that the precise form of the dispute resolution procedure would flow from the governance arrangements. JA commented that there would be a need to identify different categories of disputes, which would have different defined dispute resolution processes.

There was general consensus that any formal dispute resolution process should only be resorted to where parties were unable to resolve their differences between themselves. The second stage of the escalation process should be mediation, and only as a last resort should there be escalation to a formal dispute resolution body.

Action: BG & JA to provide drafting of a dispute resolution process. Invitation to discuss drafting would be open to all.

Section 23 – Contracts (Rights of Third Parties) Act 1999

It was noted that the Rights of Third Parties Act was not applicable in Scotland and that certain versions of this clause also made reference to competition law.

Section 24 – Miscellaneous

No comment

Section 25 – Governing Law

It was thought that overall the governing law ought to be that of England and Wales.

DE mentioned that it may be appropriate to check whether certain exceptions (for example those relating to property rights in Scotland), should be made.

Action: DE to provide details of exceptions

DE confirmed the actions required by the next meeting being those as stated in the relevant parts of these minutes and further for confirmation to be received from the Credit Cover and COG groups that they are considering the areas identified in this meeting as appropriate for their consideration.

It was requested that contact details of attendees be included in the minutes and the minutes should be copied to the absent iDNO parties.

The date for the next meeting was agreed for 27 April 2005.