

DCF DUoSA Consolidation Group

Minutes

Wednesday 7 September 2005; 10.30am

Ofgem Offices, 9 Millbank, London SW1P 3GE

Attendees

Mike Harding (MH) – Laing Energy
Mark Field (MF) – npower
Chris Allanson (CA) – NEDL YEDL
Roger Barnard (RB) – edfenergy
John Hill (JH)– Central Networks
Jill Ashby (JA) - Gemserv
Mark Duffield (MD)– NGC
John Lucas (JL) - ELEXON
Kevin Woolard – BGT
Bill Gunshon (BG) – Npower

Louise Wright – Gemserv
Ron Slade (RS)– edfenergy
Steve Mackay (SM)– Ofgem
Dipen Gadhia (DG)– Ofgem
David Edward (DE)– Ofgem
Peter Waymont (PW)- edfenergy
Clover Powell (CP) - Ofgem
Doug Holbrook (DH) SP
Mo Sukkerman (MS)– SSE
Kathryn Dodgeson (KD) - UU

Opening Remarks

MH opened the meeting and set out the agenda for the meeting.

Credit Cover

DH indicated that the COG had received drafting on credit cover back from the Wragge & Co. There were still a couple of issues outstanding before the document could be issued but they hoped to be in a position to circulate Wragge's drafting early in the following week.

The group agreed that comments on drafting should be fed back directly to DH on behalf of the COG. All agreed to provide comments by 30/09/05. Everyone was asked to redline comments, DH would forward them to MH who agreed to circulate them to the group.

ACTION ALL

Connection Issues

RB explained the process of development and consultation which the subgroup had undertaken since the last meeting. He indicated that the issues around clause 3.6 remained unresolved and it was unclear how a solution was going to be found. What was clear now was that there were many DUoSA's in existence that did not have clause 3.6. RB therefore questioned the concept of the existence of a standard DUoSA.

MH summarised the sub groups approach. They looked at three areas;

1. Content of the terms
2. proposals for standard performance changes
3. License Condition 20

MH stated that he was not aware of any members of the group raising concerns over the solutions developed in these areas with the exception of clause three and standard condition 20.

MH said that the version of the standard DUoSA the group were using was one that incorporated post NETA changes and that companies had developed their own variations from that document. MH indicated that he was also willing to circulate the version of the DUoSA drafted by Herbert Smith dated 21 June 1988 if parties would consider it useful by enabling them to see how this issue was dealt with pre NETA. He continued this may help everyone understand what the issues were.

MH suggested that it was important to identify the key issues with connection terms. In an attempt to provide clarity he asked if Suppliers accepted in principle the presence of connection terms in their contract? MH suggested that if yes the issue might simply be that Suppliers do not like the current drafting, but if not then the issue might be a much more fundamental one.

RB clarified that the Utilities Act deems standard connection terms to exist between suppliers and customers which reflect exactly the terms present in the DUoSA before the group. He noted that if the DUoSA varies these terms there would be an inconsistency between terms deemed by statute and those stipulated in the DUoSA.

MH asked again if Suppliers have an issue with standard connection terms being within the DUoSA?

BG indicated that the problem he perceived was not particularly the existence of the term itself, but how stable those terms were. He indicated that he would not mind referencing within the DUoSA a 'signpost' to such terms for example on a website. He did mind them being there if they were in the form indicated in the DUoSA the group was working with which could potentially mean Suppliers having to change such terms at the whim of the DNO each DNO potentially capable of asking for different changes. This would place a heavy burden on suppliers in terms of managing their contracts.

MF stated that if such terms must appear in the document suppliers need to know they can manage the obligation created in an effective manner. His unhappiness stemmed from the fact that it was unclear how frequent the variances covered under clause 3.6 might be.

BG indicated he would be happier with standard connection terms being developed on an industry wide basis.

MH clarified that the issue was therefore one about variation and change management?

BG indicated that the concern was that one DNO could propose a change, others may not follow and this created difficult change management issues for suppliers.

RB stated that the DUoSA post 1988 as is suggested in his paper is that the terms between the DNO and customer via the 3rd Party Rights Act and the Supply contract are in fact very limited. They were intended to only limit the liability on the network operator.

BG/MF both stated that nevertheless they preferred the sign post option. If this was not feasible then the concerns regarding change management would need to be resolved.

CA suggested that if the signpost option was viable then this would address a number of other issues as well; namely,

1. It would fulfil the Ofgem and DTI objective for standard terms to be issued
2. DTI would be able to regularly re visit the terms and consider them with respect to health and safety.
3. It would protect the Supplier against the meter operator
4. If liabilities were agreed on a national level, then there would be no ambiguity regarding compensation etc.

KD asked if under the sign post method, would the issue with the Utility Act deemed contracts be captured.

RB indicated that if the terms were different then the answer would be no, the terms would be discriminatory because they would be different.

MH suggested that if the standard connection terms mirrored the deemed contract terms, then that could resolve the issue.

MH/BG/RB all indicated that even with the signpost website solution a standard set of terms nationally would be the best approach.

SM indicated that in previous discussions adopting a standard set of terms nationally may raise competition act issues.

RB did not consider this the case. The real issue was the limitation of liability issue which is what Suppliers currently have.

MH summarised;

Suppliers preferred the signpost website solution, if not feasible, a national set of standard terms with adequate change management proposals would be acceptable.

DNO's preferred the signpost website option as well.

MH asked that if the website solution was not viable would DNO' accept that there should be a standard set of terms nationally?

DH indicated this may cause problems with micro generation.

MH asked the Scottish parties opinion. The Website solution seems to deal with their issue but a standard set of terms in the contract does not..

RB indicated that the signpost solution as is used in the railway industry where railway tickets reference terms and conditions to the National Rail Conditions of Carriage available at ticket offices seems to be rooted in a by law. It is not very clear what legal basis they have. RB asked if Ofgem would consider having such a solution authorised or implemented in the License of both the DNO and Supplier?

RS asked if a by law would be required?

RB indicated he did not think so, but regulatory approval probably would be required.

RB agreed to produce a paper for the October consolidation group meeting investigating this further.

The group asked RB to consider in his paper short term measures if the implementation of the website solution required CLM etc.

ACTION RB

Payment Terms

MH indicated that the issue with payment terms seems to be – “What is defined as Use of System (UoS) charges?”

For example does charging for un-metered suppliers fall within this definition?

CA suggested that UoS charges should be everything a Network Operator is obliged to do or perform under its License or Statute. Anything else should sit outside.

CA enquired if there was a difference in the way respective DNO's approached such charging? Did some prefer to have all charging within the definition and therefore obtain the protection of the DUoSA while others preferred some types of charges to be outside the DUoSA, giving them some flexibility.

RB considered that the current clause 6 of the DUoSA provides for only a minimum group of charges that have to be considered as “Use of System Charges”, the remaining types were therefore flexible as to whether they are within this definition or not.

MF suggested that as a starting point it may be useful to have a matrix that gave a definition of UoS charges outlining all types of possible charges, indicating if they fell within this definition, were clearly outside it or if there was unclarity as to where they fell. Also the matrix could indicate what Licence condition or other source i.e. Code the charge flowed from. The Payment sub group agreed to carry out this exercise.

It was also suggested the matrix could identify the payment terms for each type of charge.

The group would review the table and attempt to agree where a particular type of charge should be placed. The table could then be reproduced in the DUoSA.

ACTION PW on behalf of the Payment Group

JA commented that the MRA schedule 8 provides a similar table which specifies similar information.

MH summarised therefore that the issue does not seem to be paying for services provided, but the payment terms associated with charges. Those that fell within the definition UoS charges had specific payment terms those that were outside it allowed flexibility to agree payment terms on a bi-lateral basis.

CA indicated that some DNO's would not want certain charges to be within scope allowing them to retain the ability to agree terms bi laterally.

MH indicated that payment terms in Part 2 schedule 4 needed to be considered.

Distributed Generation

The DG work has been circulated to all parties, only 1 comment had been received, from JA who indicated that the MRA does not permit License exempt parties so the Conditions Precedents in the DUoSA were incorrect.

The group agreed that comments on drafting should be fed back directly to DH on behalf of the COG. All agreed to provide comments by 30/09/05. Everyone was asked to redline comments, DH would forward them to MH who agreed to circulate them to the group.

ACTION ALL

House Keeping Issues

MH indicated that some of the identified changes had been incorporated but not all of them. Parties were asked to review the document and comment if appropriate.

ACTION ALL

For Agreement

MH indicated that the group did not have a fully consolidated DUoSA yet but was well on the way to achieving one. He considered the only issues that remained outstanding were those the group had discussed today.

DH enquired if the website option re connection terms would be carried forward in this consolidation exercise. MH considered it was unlikely.

RB enquired where new clause 10.6.5 had come from.

MH provided that it was part of the DG work and covered the scenario where parties shared a common MPAN or common Fuse Point(s).

Next Steps

DE indicated that Ofgem intended to publish its Final Proposals later this month or early next month. DE provided a brief summary of what the document structure would be. DE indicated that the document would give indicative drafting for a proposed CLM.

The CLM would allow for a governance framework to be appended to a consolidated document.

DE suggested that voting on a CLM would close in early November and parties could present such a consolidated document to Ofgem in January next year.

RB raised strong objections as to the timescales, which he considered to be unrealistic.

DE clarifies Go Live would be in April next year, the period between February and April would be the Go Active period.

MH enquired that in terms of consolidation he was still unclear how issues that could not be agreed could be resolved. And he was unclear as to who would pay to make this project live.

RB indicated that once a CLM had been approved there was a considerable amount of work that remained to be done that included issues such as;

1. Accession
2. Drafting of the Modification Process
3. Resolution of drafting disagreements

MS asked if the Go Active and Go Live dates would be part of the CLM and therefore in the License?

DE indicated that presently the intention is to include them in the Final Conclusions document. He indicated that the dates he had provided were aspirations.

RB suggested that Ofgem take advice from industry and then set more realistic time scales.

DE indicated that Ofgem also had experience of similar projects and had drawn on this when considering the time scales.

MH indicated it may be useful to develop a project plan, consider the issue, communicate this to everyone in industry and then look at setting of time scales.

BG suggested looking at the experience of SPAA which had taken considerably longer.

CA also suggested that consideration should be taken by Ofgem of other Ofgem projects on going at the same time, which would impact on the resources industry and individual companies could dedicate to this project since they would more often then not involve the same people.

RB enquired if Ofgems conclusion document would deal with License Objectives on Suppliers.

BG indicated he would be happy for such an obligation and would be happy if npower were asked to cooperate in the production of such a document.

DE indicated that this was still under consideration internally and fell into the scope of the Supply License review.

BG indicated that sometimes even with the over all principal of “less regulation is more”, it had to be accepted that in certain areas regulation was necessary and this may be one of those areas.

RB indicated that perhaps it would not impact so much on the Supply License Review if the clause were drafted as a sunset clause.

For discussion and agreement by the Group

Resolution of Issues Going Forward

- Group to come back with solutions as discussed above.

MH suggested that once fit for purpose drafting had been completed a small sub group including MRASCo., BSCCo., and a few others could work through the drafting to ensure that it complies with other relevant codes/agreements and legislation.

BG considered this group could be formed now and start work immediately, but they could leave out the issues still to be agreed and only work on the remaining parts of the document.

The following members volunteered to be part of such a group.

JL (or another representative from Elexon)

JA/LR from MRASCo

RB – Chair

MF will ensure an npower representative to provide a supplier perspective

JH will provide a CE electric representative to provide a DNO prospective

CP will provide an Ofgem representative

MH

JA would circulate times and room availability at MRASCo.

This group agreed to meet on **6 October 2005**

The consolidation Group agreed their next meeting for 27 October 2005