

Defining Use of System Charges

David Tolley's paper of the 27 October 2005 summarised concerns that have been raised with the lack of a clear definition of the term Use of System Charges and therefore with the scope of charges that come under such term. Key points made in David's paper are:

"....it may not be appropriate for charges in respect of competitive services that a distributor may continue to provide."

"....only in the case of monopoly services provided by a distributor should the rigour of Clauses 7 and 8 apply."

The core proposal is that"

"Use of System Charges should be defined as those contained in the Charging Statement produced pursuant to Condition 4A of the Distribution Licence, and for which there is an approved methodology described in the Use of System Charging Methodology..."

Comments on Core Points

Isn't the key differentiator not whether the services are competitive but whether the Distributor has an option as to whether it has to offer such services. Therefore it may be more appropriate for the Clauses 6, 7 and 8 to refer only to those services for which the distributor has such an obligation. To this end I would contend that services provided under Condition 36A should also fall under Clause 6, 7 and 8

It then follows that other services for which the LDSO has a choice as to whether it offers them (or not) should form part of this agreement or come under a separate agreement with its own commercial terms.

In progressing this rationale I have reviewed how the DUoSA could be change to reflect this

The Distribution Licence

Condition 4A requires that any statement produced pursuant to the Condition is in accordance with the use of system charging methodology. Also paragraph 2 of Condition 4A describes the charges that are to be included in such a statement as follows

- "a) a schedule of charges for the distribution of electricity under use of system;"*
- "(c) a schedule of the charges (if any) which may be made in respect of accounting and administrative services;" and*
- "(d) a schedule of the charges (if any) which may be made for the provision and installation of any electrical plant at entry or exit points, the provision and installation of which are ancillary to the grant of use of system, and for the maintenance of such electrical plant;"*

For ease of reference Condition 4A is reproduced in Appendix 1.

Secondly, Condition 1 of the Electricity Distribution Licence defines “Use of System Charges” as meaning:

“...charges made or levied, or to be made or levied, by the licensee for the provision of services as part of the distribution business to any person, all as more fully described in standard conditions 4 (Use of System Charging Methodology) and 4A (Charges for Use of System), but does not include connection charges.”

The DUoSA

Clause 6 of the current drafting of the Use of System Charges states

“The User shall pay to the Company in respect of Use of Distribution System charges set out in Schedule 3....”

“Such charges (the “Use of System Charges”) will be calculated in accordance with the Condition 4A Charging Statement, the Condition 14A Statement, and/or the Condition 36C Charging Statement (as the case may be)...”

The term Use of System Charges is defined in the context of for Use of Distribution System charges, Use of Distribution System Charges being defined in the DUoSA as meaning:

“the use of the Distribution System for the passing of electricity into the Distribution System and for the conveyance of such electricity by the Company through the Distribution System to Exit Points or from Entry Points”

Therefore, the drafting of Clause 6 would appear to turn in on itself: Firstly describing Use of System Charge to mean charges for Use of Distribution System and then, in Clauses 6.1.1 through to 6.1.3, describing Use of System Charges to mean more than Use of Distribution System.

The revised drafting of Clause 6 below attempts to address this and is on the basis that the term Use of System Charges be included in the DUoSA definitions in Clause 1 of the DUoSA and that such definition replicate the one in the Licence.

Schedule 3

Not sure why schedule 3 is required propose that this is removed and that reference to charges is directly to charging statements

Transactional Charges

The treatment of Transactional Charges needs further work.

Clause 6.3 states that payment of charges will be by reference to Settlement Class except where:

- “6.3.1 the supply of electricity imported via an Exit Point or exported via an Entry Point is measured by Half-Hourly Metering Equipment (as defined in Annex X-1 of the Balancing and Settlement Code) for the purposes of Settlement; and/or*
- 6.3.2 the Use of System Charge is not comprised solely of one or more standing charge(s) and/or one or more Unit Rate(s); and/or*
- 6.3.3 the Use of System Charge is specified in Schedule 3 as not being billed by Settlement Class; or*
- 6.3.4 where Use of System Charges are to be determined as a result of an Extra-Settlement Determination”*

Transactional charges qualify under this exception since they fall under the scope of Use of System Charges. Clause 8 covers the payment of such charges. Therefore it is debateable as to how Schedule 4 fits in with this since it specifies alternative payment terms.

It may be that transactional charges that fall under the scope of services described by Condition 4A are treated in accordance with the provisions of Clause 8 and that services that are outside this scope of these works are not only outside the scope of Clause 8 but outside the scope of Schedule 4. The question then is does Schedule 4 have any value under the current industry arrangements.

If transactional services require different payment terms than those specified in Clause 8 then a new clause will need incorporating into the agreement. However, a clear rationale for different payment terms will need to be demonstrated.

6. CHARGES

6.1 The User shall pay to the Company ~~Use of System Charges and charges for services provided pursuant to Condition 14 and Condition 36A (as the case may be)~~. The Company may vary such charges at any time by giving at least 40 days' written notice to the User. Such charges and any variations are and will be calculated in accordance with the Condition 4A Charging Statement, the Condition 14A Charging Statement, and/or the Condition 36C Charging Statement (as the case may be), or pursuant to the provisions of Condition 48 in the Electricity Distribution Licence. The ~~charges in this Clause 6~~ shall be deemed to include:

Deleted: in respect of Use of Distribution System the charges

Deleted: set out in Schedule 3.

Deleted: (the "Use of System Charges")

Deleted: Use of System Charges

6.1.1 charges for the Use of Distribution System provided by the Company to the User under this Agreement;

6.1.2 charges for certain services provided by the Company to the User pursuant to:

(A) the BSC and the CUSC; and

(B) the Master Registration Agreement,

Deleted: as amended from time to time

and recoverable by the Company as an element of the charges which it levies on the User under this Agreement; and

6.1.3 charges that the Company is required to make pursuant to Condition 48.

6.2 On any occasion upon which the charges payable by the User under this Agreement have not been calculated strictly in accordance with the Condition 4A Charging Statement, the Condition 14A Charging Statement and/or Condition 36C Charging Statement, and/or the Condition 48 Charging Statement of the Electricity Distribution Licence, an appropriate adjustment shall be made by the Company and submitted to the User. Where:

(A) the adjustment discloses an overcharge, the Company shall repay to the User the amount by which the User has been overcharged together with interest thereon from the due date of the invoice containing the overcharge until the date of repayment. Such interest shall accrue from day to day at the base lending rate during such period of Barclays Bank plc, compounded annually; or

(B) the adjustment discloses an undercharge, the User shall pay to the Company the amount by which the User has been undercharged together with interest thereon from the due date of the invoice which should have included the amount of the undercharge until the date of payment. Such interest shall accrue from day to day at the base lending rate during such period of Barclays Bank plc, compounded annually.

Where the User disputes the adjustment, the parties shall attempt to resolve the dispute in good faith. Where the dispute remains unresolved after 20 Working Days, either party may refer the dispute to arbitration in accordance with Clause 22 and the parties agree to pay the amount payable or repayable (if any) as determined thereby.

6.3 The Company shall invoice Use of System Charges (but excluding any charges calculated by reference to number or frequency of specific transactions) by reference to Settlement Class using aggregated data obtained from the Supercustomer DUoS Report except in relation to those Metering Points registered to the User under the Master Registration Agreement where:

6.3.1 the supply of electricity imported via an Exit Point or exported via an Entry Point is measured by Half-Hourly Metering Equipment (as defined in Annex X-1 of the Balancing and Settlement Code) for the purposes of Settlement; and/or

6.3.2 the Use of System Charge is not comprised solely of one or more standing charge(s) and/or one or more Unit Rate(s); and/or

6.3.3 the Use of System Charge is specified in Schedule 3 as not being billed by Settlement Class; or

6.3.4 where Use of System Charges are to be determined as a result of an Extra-Settlement Determination.

6.4 All Use of System Charges payable by the User pursuant to this Clause 6 and Clauses 7 and 8:

- 6.4.1 are exclusive of Value Added Tax and the Company may add to such amounts and the User shall pay Value Added Tax (if any) at the rate applicable thereto from time to time and Value Added Tax shall be payable at the same time and in the same manner as the amounts to which it relates; and
- 6.4.2 shall be without prejudice to any claims or rights which the User may have against the Company and except as expressly permitted by Schedule 6 below shall be made without any set-off or deduction in respect of any claims or disputes or otherwise.
- 6.5 The User shall provide Cover in accordance with the provisions of Schedule 1.
- 6.6 The Company may charge the User Use of System Charges calculated by reference to electricity discovered or reasonably and properly assessed to have been supplied to a Customer or exported via the Distribution System by a Generator while a customer of the User but not recorded at the time of supply or import (as the case may be) (for whatever reason) by the metering equipment installed pursuant to Clause 12.1. At any time when the Company charges the User Use of System Charges under this Clause, it shall explain to the User the calculation of those charges and the basis of that calculation.
- 6.7 The User shall pay to the Company in respect of any services provided under this Agreement the charges set out in the relevant Schedule or (if no such charge is specified in this Agreement or agreed between the parties) in the Condition 4A Charging Statement, the Condition 14A Charging Statement, and/or the Condition 36C Charging Statement (as the case may be).
- 6.8 Without prejudice to Clause 6.1, where the Company is intending to revise the charges set out in Schedule 3 and Schedule 4, it shall serve a copy of any notice it sends to the Authority pursuant to paragraph 5 of Condition 4A of the Electricity Distribution Licence on the User as soon as reasonably practicable after such notice is sent to the Authority.
- 6.9 The Company may charge the User Use of System Charges calculated by reference to electricity assessed to have been supplied to a Demand Customer while a customer of the User during a period in which the User was supplying electricity to that Demand Customer in accordance with a last resort supply direction issued by the Authority in accordance with Condition 29 of the User's Electricity Supply Licence from the time that last resort supply direction takes effect. This right subsists from the date on which the last resort supply direction takes effect and continues irrespective of whether or not the Metering Point applying to the Demand Customer is registered to the User in accordance with the Master Registration Agreement until such time as the relevant Metering Point is registered to another supplier in accordance with the terms of the Master Registration Agreement.
- 6.10 For the avoidance of doubt, nothing in this Clause 6 precludes the Company from negotiating with the User charges arising from or pursuant to an Extra-Settlement Determination.
- 6.11 Where any dispute arises under Clause 6.10, either party shall be entitled to refer the matter to the Authority as if it were a dispute falling within Condition 4E of the Electricity Distribution Licence.

7. BILLING AND PAYMENT BY SETTLEMENT CLASS

- 7.1 This Clause 7 applies to Use of System Charges which are invoiced by reference to Settlement Class in accordance with Clause 6.3.
- 7.2 Following its receipt of each Supercustomer DUoS Report in accordance with the timetable for Settlement after each Settlement Run relating to each Settlement Day, the Company shall deliver Daily Statements to the User as soon as reasonably practicable.
- 7.3 The Company shall submit to the User as soon as is reasonably practicable after the end of each charging period an account ("**Initial Account**") specifying Use of System Charges payable in respect of each Initial Settlement Run in respect of which a Daily Statement has

been produced and which has not previously been included in an Initial Account. Such Initial Accounts shall be based upon the Daily Statements provided pursuant to Clause 7.2.

- 7.4 Where a subsequent Daily Statement for any Settlement Day indicates that, as a result of a subsequent Reconciliation Run, Post-Final Settlement Run, or Extra-Settlement Determination, the Use of System Charges in respect of that Settlement Day are different from those previously billed, the Company shall calculate such difference and the interest thereon and shall submit an account (“**Reconciliation Account**”) in respect of such difference to the User as soon as reasonably practicable after the end of each charging period. Such interest shall be calculated in accordance with Schedule 5.
- 7.5 Within 14 days of the date of an Initial Account or Reconciliation Account submitted in accordance with Clause 7.3 or 7.4, the User shall pay to the Company all sums due in respect of such Initial Account or Reconciliation Account in pounds sterling by electronic transfer of funds to such bank account (located in the United Kingdom) as is specified in the Initial Account or Reconciliation Account, quoting the Initial Account or Reconciliation Account number against which payment is made and/or such other details as the Company may reasonably require.
- 7.6 Where any sum included in an Initial Account or Reconciliation Account submitted in accordance with Clause 7.3 or 7.4 is disputed by the User, the provisions of Schedule 6 shall apply.

8. SITE SPECIFIC BILLING AND PAYMENT

- 8.1 This Clause 8 applies to Use of System Charges in relation to Metering Points that fall within Clauses 6.3.1 to 6.3.3 (inclusive).
- 8.2 As soon as is reasonably practicable after the end of each charging period, the Company shall submit to the User an account specifying the Use of System Charges payable for the whole or any part of that charging period. Such account shall be based on:
- 8.2.1 data from metering equipment or any Equivalent Meter provided by the User in accordance with Clause 12.2 or, where actual data are not available, estimated data prepared in accordance with methods of estimation established under the Balancing and Settlement Code by the relevant Data Collector; and
- 8.2.2 other data as specified in the Condition 4A Charging Statement and/or the relevant Connection Agreement,

provided that the Company may use estimated data prepared by the Company where the User fails to provide the data under Clause 8.2.1 and 8.2.2.

Where an account is based on estimated data, the account shall be subject to any adjustment which may be necessary following the receipt of actual data from the User.

- 8.3 Within 14 days of the date of an account submitted in accordance with Clause 8.2, the User shall pay to the Company all sums due in respect of such account by electronic transfer of funds to such bank account (located in the United Kingdom) as is specified in the account, quoting the account number against which payment is made and/or such other details as the Company may reasonably require.
- 8.4 Where any sum included in an account submitted in accordance with Clause 8.2 is disputed by the User, the provisions of Schedule 6 shall apply.

Appendix 1

Standard Condition 4A. Charges for Use of System

1. The licensee shall prepare a statement, in a form approved by the Authority, which sets out the basis on which charges will be made for use of system ("the charging statement"), which:
 - (a) is in such form and contains such detail as would enable any person to make a reasonable estimate of the charges to which he would become liable in respect of use of system; and
 - (b) from 1 April 2005, is prepared in accordance with the use of system charging methodology.
2. The statement referred to at paragraph 1 shall include:
 - (a) a schedule of charges for the distribution of electricity under use of system;
 - (b) a schedule of adjustment factors to be made for distribution losses, in the form of additional supplies required to cover those losses;
 - (c) a schedule of the charges (if any) which may be made in respect of accounting and administrative services;
 - (d) a schedule of the charges (if any) which may be made for the provision and installation of any electrical plant at entry or exit points, the provision and installation of which are ancillary to the grant of use of system, and for the maintenance of such electrical plant;
 - (e) information on electricity distribution use of system rebates (if any) given or announced to authorised electricity operators in the 12 months preceding the date of publication or revision of the statement; and
 - (f) up until 31 March 2005, the principles on which and the methods by which charges will be made for use of system.
3. Without prejudice to paragraph 6, before making any amendment to its use of system charges, the licensee shall give the Authority a revised charging statement which sets out the amended charges and specifies the date from which they are to have effect.
4. Without prejudice to paragraph 4 of standard condition 4 (Use of System Charging Methodology) and paragraph 6 of this condition, before any modification of the use of system charging methodology comes into effect, the licensee shall give the Authority a revised charging statement which sets out the amended charges and specifies the date from which they are to have effect.
5. The licensee shall, not less than three months before the date on which it proposes to amend its use of system charges in respect of any agreement for use of system:
 - (a) send to the Authority a notice setting out those proposals, together with an explanation of them (including a statement of any assumptions on which the proposals are based); and
 - (b) send a copy of such notice to any person who has entered into an agreement for use of system in accordance with the provisions of this licence.

6. Except with the prior consent of the Authority, the licensee shall not amend its use of system charges in respect of any agreement for use of system unless:
 - (a) the licensee has given prior notice of the amendment in accordance with paragraph 5; and
 - (b) the amendment reflects the proposals made in the notice (subject only to revisions consequent on material changes in the matters which were expressed, in the statement under paragraph 5 which accompanied the notice, to be assumptions on which the proposals were based).
7. The licensee:
 - (a) may periodically review the information set out in and, with the approval of the Authority, change the form of the charging statement;
and
 - (b) shall, at least once in every year, make such changes (if any) as are necessary to the charging statement to ensure that the information set out in it continues to be accurate in all material respects.
8. The licensee shall give or send a copy of any statement (or the most recent revision thereof) prepared in accordance with paragraph 1 to any person who requests it.
9. The licensee may make a charge for any statement given or sent pursuant to paragraph 8 of an amount which does not exceed the amount specified in directions issued by the Authority for the purposes of this condition based on the Authority's estimate of the licensee's reasonable costs of providing the statement.
10. Unless the Authority determines otherwise, the licensee shall not enter into any use of system arrangement which does not ensure that its use of system charges will comply with the charging statement (or, where applicable, with the revision of that statement which is most recent at that time) at each time at which charges fall to be made under the arrangement.
11. Nothing in this condition affects the ability of the licensee to charge for use of system in accordance with the charging statement (or the most recent revision thereof) issued in accordance with paragraph 1.
12. The Authority may (following consultation with the licensee and, where appropriate, with any other authorised electricity operator likely to be materially affected thereby) issue directions relieving the licensee of its obligations under paragraph 1 to such extent as may be specified in the directions.