Governance in the Electricity Distribution Commercial Arrangements

Conclusions and Final Proposals

23 November 2005

Summary

The commercial contractual arrangements relating to connection to and use of distribution networks are currently set out in bilateral agreements between the distribution licensee and each customer, the Distribution Use of System Agreements (DUoSA). The obligations set out in these bilateral agreements are common in many respects but there is a lack of transparency as they are not accessible in a central location. In addition, any changes to obligations need to be agreed on a bilateral basis which means the costs of amending the agreements are duplicated and that the introduction of changes on a sector-wide basis is difficult to achieve, especially for smaller participants.

It was suggested that the introduction of new arrangements and associated governance might, amongst other things, help increase the transparency of the arrangements, streamline change management, and help provide all parties with an equal chance to have their view heard. A number of industry led working groups investigated the issues involved, and Ofgem issued a series of consultation papers on the subject.

This conclusions and final proposals document summarises the comments and discussions with industry on this topic, including Ofgem's views where appropriate. This document also outlines Ofgem's proposed governance model for a new agreement that could replace the DUoSAs, referred to in this document as the Distribution Connection and Use of System Agreement (DCUSA). This forms a framework of key issues which would aid development of the governance arrangements.

Appendix 1 to this conclusions document provides some suggested distribution licence drafting to introduce a multilateral framework (such as that described in Chapter 3). Ofgem invites parties to comment on the licence drafting. Ofgem will consider comments before submitting the drafting to a collective licence modification (CLM).

This conclusions and final proposals document also covers a number of supplementary issues that have been raised in response to the consultation documents.

Table of Contents

1. Introduction

1.1. The commercial arrangements currently in place in the electricity distribution sector have been the subject of review since April 2002. Workstreams have operated under the auspices of the Distribution Commercial Forum (DCF). A number of reasons[1] have emerged as to why change may be desirable. These were cited in Ofgem's Impact Assessment of May 2005.

1.2. In addition to evaluating the need for change, the workstreams also made an initial assessment of improvements which might be made. It was suggested in these workstreams and in other comments made during the process of development, that the introduction of centralised arrangements, possibly in the form of a regulated code or industry agreement, would;

- reduce the administrative burden on participants,
- increase the transparency of the arrangements,
- encourage better solutions to be brought forward,
- enhance the responsiveness of the arrangements,
- help include the views and suggestions of all parties,
- improve the inclusiveness of the arrangements,
- promote cost savings by having a single change process,
- centralise administration to achieve efficiencies, and
- enable better business cost justification.

[1] These conclusions were drawn from the work of the Distribution Commercial Forum Governance Sub Group. Key documentation pertaining to the Group can be found on the Ofgem website www.ofgem.gov.uk

Previous Work

1.3. Ofgem has conducted two consultations on whether to develop new arrangements in the sector and on how to implement any potential changes. The key themes of these consultations and the responses which arose from them are summarised in Chapter 2.

1.4. The DCF has continued to meet throughout these consultations. At its meeting of 2 March 2005 the DCF created a subgroup known as the Consolidation Group which met until November 2005. The Consolidation Group considered in which respects, and to what extent, the various Distribution Use of System Agreements (DUoSAs) currently in force differ from one another. Having completed this work a new consolidated DUoSA was developed.

1.5. At the meeting of the DCF on 16 September 2005 it was decided that a new group should be established which would build on the work of the Consolidation Group to identify and undertake the next steps required to move from bi-lateral to multi-lateral arrangements. The work of the group is ongoing.

Structure of this document

1.6. Chapter 2 outlines the responses to the December 2004 consultation and the May 2005 Impact Assessment in relation to a number of key issues. It also provides Ofgem's view in relation to these matters. Chapter 3 sets out Ofgem's proposed governance model. Chapter 4 outlines Ofgem's view of the likely next steps to be taken. Appendix 1 provides possible licence conditions that may give effect to the proposals. Appendix 2 sets out two process flow diagrams outlining how Ofgem anticipates changes would be raised, decided and implemented under the DCUSA.

Who to contact about this conclusions document

1.7. If you have any queries about this document please contact, the Electricity Modifications team - Nick Simpson, David Edward, Steve Mackay or Dipen Gadhia on 020 7901 7000.

2. Responses to December 2004 consultation and Impact Assessment 2005

2.1. In December 2004 Ofgem issued a consultation document entitled *Governance in the Electricity Distribution Commercial arrangements* (December 2004, Document No 276/04 (the December document)). The document sought stakeholder views about whether the disparate rules and obligations under the existing DUoSAs should be consolidated into a single multilateral document, and how such a document could be implemented. The consultation invited views on a number of features of the potential governance arrangements; summarised the view of a sub-group constituted by industry participants, and offered Ofgem's provisional view. The consultation period closed on 11 February 2005.

2.2. In May 2005 Ofgem published an *Impact Assessment on the Governance in the Electricity Distribution Commercial Arrangements* (May 2005, Document No 137/05 (the Impact Assessment)) evaluating four possible options for the development of the electricity distribution commercial arrangements. These options were;

- Option A – Retaining the current bilateral based change management arrangements but standardising the key documentation,
- Option B – Retaining the current arrangements in their entirety (do nothing),
- Option C – Replacing the current arrangements with a multiparty code and expert Panel with bilateral application where appropriate, and
- Option D – Replacing the current arrangements with a multiparty agreement and Executive Committee, with bilateral application where appropriate.

2.3. Comments were invited from interested parties on Ofgem's analysis and views in that document. The consultation period closed on 29 June 2005.

2.4. There were 18 respondents to the December 2004 consultation (one of which was a confidential response) and 16 respondents to the May 2005 Impact Assessment (two of which were made on a confidential basis).

2.5. Ofgem subsequently discussed specific issues with a number of industry parties to ensure a full understanding of the implications of the options available.

2.6. The paragraphs below summarise industry views on a number of issues raised by the consultations.

Transparency and Efficiency

Respondents' Views

2.7. The benefits of consolidating the existing terms into a single multilateral document have been recognised by industry participants for some time, with the majority noting the improved transparency and responsiveness to change which could arise from such a development. Five respondents to the Impact Assessment noted the reduced potential for discriminatory treatment or the enhanced transparency which such a document would provide. Others recognised the potential to lower industry costs. One respondent suggested that the proposed arrangements would make the terms available in one place and therefore provide greater transparency than the existing arrangements. Another suggested that consolidating the terms without the governance measures may increase transparency for new entrants, but would do little to increase the transparency of the existing DUoSAs. The respondent also considered that this may lead to discrimination on the grounds that existing DUoSA signatories may have potentially more favourable contractual terms than new entrants, or vice versa. Six respondents noted the potential for facilitating changes required by the development of DG.

2.8. One party emphasised that the potential benefits needed to be won without excessive costs to smaller participants. Another noted that although consolidation of the terms of the existing DUoSA was beneficial it did not necessitate a root and branch overhaul of the existing arrangements.

2.9. The majority of respondents to the Impact Assessment considered a multilateral framework would be the most effective on the grounds that consolidated arrangements with formal change management would remove the inefficiencies involved with having to undertake multiple bilateral negotiations prior to effecting change on a sector-wide basis. It was considered that it would also provide cost-savings, and remove the inefficiencies evident in amending hundreds of bilateral DUoSAs.

2.10. It was also suggested that, given the lack of obligation on any party to adopt a consolidated bilateral DUoSA, any forum under Option A could become less relevant over time and parties could well choose to ignore any resolutions over a proposed change, instead of actively engaging with others to seek an appropriate solution for all.

2.11. Several parties have and continue to qualify their support for the project on the basis that the arrangements must be cost-effective.

2.12. Two respondents stated that a multilateral framework was not required in the distribution commercial arrangements. Instead, it was suggested that an informal commercial forum could help prevent any divergence between agreements. In addition, it was proposed that any deficiencies with the DUoSA could be best addressed by an informal forum.

Ofgem's View

2.13. Replacing approximately 400 bilateral contracts in the electricity distribution commercial sector with a single multilateral contract, with limited bi-lateral clauses where appropriate, has clear benefits in terms of the transparency of the arrangements. It would give new entrants and existing market participants enhanced visibility of the terms available to others. It would also remove any unintentional discrimination which may exist by ensuring that, wherever possible, the same terms apply to all counterparties. By achieving these aims, Ofgem considers that the proposed arrangements, as expressed in this document, would both promote competition and facilitate the efficient operation of the distribution commercial arrangements.

2.14. The existence of a multilateral contract is likely to create efficiencies because these changes would only need to be negotiated and approved once before it can apply across the sector, rather than having to be negotiated as many times as there are contracts in place. Efficiencies are also likely to accrue to all market participants, in particular smaller parties, who may benefit from innovations developed as a result of shared industry expertise and resources.

2.15. Ofgem considers that the proposed governance model, which has been based on consideration of the responses, collaboration and discussion between Ofgem and the industry, can deliver greater transparency and efficiencies better than any of the individual options identified in the Impact Assessment. Ofgem considers that the final model defined in this document is preferable to either Options A or B in the Impact Assessment on the basis that it better ensures that improvements achieved apply uniformly and in a more enduring fashion. It also helps to ensure that the changes made to the arrangements both apply to and are suitable for all participants. The final Ofgem option, which includes some of the features of Options C and D but also incorporates some other features, also better facilitates transparency and efficiency and to a greater degree than either of those two options would have done in isolation.

Scope of a Distribution Connection and Use of System Agreement (DCUSA)

Respondents' Views

2.16. In the December document Ofgem posed the question whether it would be appropriate for other issues to be brought within the scope of the document. Responses suggested a general level of consensus that the arrangements should be reflective of the matters covered by the current bilateral DUoSAs. Ofgem asked the same question in the Impact Assessment, but indicated the view that only those terms typically found within a DUoSA should form part of a multilateral document.[2] Respondents were invited to make representations as to what matters (if any) outside the scope of the DUoSAs should be brought

[2] Section 3.2 *Governance in the Electricity Distribution Commercial Arrangements 137/05*

within any new framework. Again, responses suggested a general consensus within industry that the scope of the arrangements should reflect matters covered by the existing bilateral arrangements.

2.17. One respondent noted that they would prefer to see the inclusion of electronic (EDUoS) products. Another suggested the document should deal with boundary issues, especially information flows required between DNOs and Independent Distribution Network Operators (IDNOs) on the grounds that these information flows will be essential for suppliers. Another respondent suggested that metering services provided by distributors should be left out of the document as it would be difficult to reach an appropriate common specification for these services.

2.18. A number of respondents made specific reference to standard connection terms, which Ofgem had suggested as being potentially suitable for inclusion in a multilateral framework. One respondent considered that using the code framework to administer the development of the standard connection terms currently obtained on behalf of DNOs by suppliers would be beneficial. It was noted however, that the continued procurement of site specific connection agreements by DNOs was preferable for larger users, because of the significant number of customers involved and the site-specific nature of the contracts. This view was also articulated by three other respondents, who suggested that the scope should not be extended to cover larger/non-standard connection agreements not covered by the existing DUoSAs.

2.19. Two supplier respondents suggested that in general, the scope of the document should be limited to the content of the DUoSAs, but suggested alternative approaches to the issue. One suggested that although the scope of non-standard connection agreements may be difficult to consolidate, the terms should be covered in a single agreement with any necessary variations being documented in the bilateral sections. The other considered there could be merit in expanding the connection provisions to incorporate procedural arrangements for the negotiation of site-specific connection agreements for larger loads and DG, and also suggested that a framework construction agreement may be useful. A member of the DNO community considered that

a connection agreement incorporating national standard terms and conditions would be beneficial as it would provide greater transparency.

Ofgem's View

2.20. The starting content of the DCUSA should comprise an agreed consolidation of the existing DUoSA and the scope of the arrangements should be carefully defined and limited by the Collective Licence Modification (CLM) that may give effect to the new arrangements.

2.21. Ofgem would support the inclusion of any relevant subject matter which industry can agree as appropriate. Ofgem supports the use of the DCUSA to administer the development of the standard connection terms currently obtained on behalf of DNOs by suppliers. Ofgem notes that this standardisation may be less suitable for connection agreements dealing with larger customers. There may also be merit in some or all of the approaches intended to promote uniformity of non-standard connection agreements where doing so would be possible and practical. Whilst this is the case, the development of such uniformity should not be considered essential to the DCUSA arrangements.

2.22. With regard to boundary issues between DNOs and IDNOs, Ofgem notes that both these classes would be party to the multilateral arrangements and it would be appropriate for industry to agree on appropriate matters to include within the terms of the contract to facilitate effective the achievement of competition and the efficient and economic coordination of the distribution systems.

2.23. Ofgem continues to hold the view that the scope of the arrangements should be capable of extension should the parties to the document consider that such an extension would be appropriate. Ofgem is of the view that this would be best achieved by means of a further licence amendment.

Division of Decision Making Responsibilities

Respondents' Views

2.24. The issue of the decision-making responsibilities of Ofgem and the industry was a subject of some debate from the early days of the project. In general industry called for a wide range of decision-making powers to be delegated to industry. As a result, the Impact Assessment envisaged a document split into primary and subsidiary parts.

2.25. Of those who did mention this issue in their formal responses, all were supportive, although one proposed an alternative method of dividing the arrangements to that envisioned in the Impact Assessment. Under that model, the DCUSA would be divided according to whether the provisions were governance orientated, or related to the other terms under the agreement.

2.26. One respondent also commented that it would be useful to include model contract forms such as standard connection terms or urgent metering services in the subsidiary documents.

2.27. Another respondent emphasised that it was important to not only recognise the need for primary and subsidiary documents, but also the need for the DCUSA to be split into multilateral and bilateral sections, the bi-lateral sections reserved for site-specific matters.

Ofgem's View

2.28. At present, any changes in relation to the electricity distribution commercial arrangements are made by parties to the DUoSAs, apart from those matters which are referred to Ofgem for determination.

2.29. Ofgem considers that the two-tier format discussed in the Impact Assessment would be the most appropriate way to achieve this demarcation. Part 1 of the DCUSA could set out the obligations of parties (and decisions in relation to amendments to Part 1 would be taken by Ofgem), whilst Part 2 could define the manner in which the obligations are discharged (and would be determined by industry).

2.30. Part 2 of the document should be considered subsidiary to Part 1, and as such, amendments to Part 1 would have the effect of requiring any consequential changes to be made to Part 2. Amendments could be raised to move terms from Part 1 to Part 2 (should it be considered this would be appropriate and proportionate). Likewise, amendments could be raised to move terms from Part 2 to Part 1.

2.31. Ofgem notes that one respondent to the Impact Assessment suggested the document should be divided according to whether the provisions were governance orientated, or related to the other terms under the agreement. Ofgem considers that given the DCUSA would govern network/user relationships where polarised views may arise there is justification for the scope of issues where the Authority has jurisdiction to be broader than that, and that materiality, impacts on competition, and the safety and security of the networks should be determining factors.

2.32. Ofgem anticipates that the starting content of the DCUSA should be determined according to a set of criteria to be agreed between Ofgem and industry during the development process. Ofgem anticipates that potentially appropriate criteria to identify which terms are suitable for decision by Ofgem as opposed to industry might include but not be limited to:

- whether the term was likely to have a material/ significant detrimental impact on competition or a class of company,
- whether the term related to the safety and security of the networks,
- whether the term was intended to change the governance arrangements, or
- whether the term was one which the parties agreed should be determined by Ofgem.

Integration of DN Codes incorporating both technical and commercial matters

Respondents' Views

2.33. The designation of an integrated distribution network code was formally debated within an industry working group shortly before the publication of Ofgem's Impact Assessment. Two respondents to that document considered the need to develop such a document and the timing of when this should be undertaken. One party considered it an appropriate step, whilst another, although supportive of such a development, considered it should not come at the expense of the proposed implementation date for a multilateral framework to replace the DUoSAs.

Ofgem's View

2.34. The development of an integrated agreement covering both the technical and commercial aspects of the electricity distribution arrangements is a reasonable suggestion, but could take significant time to develop. Progress towards an integrated approach may be better taken one step at a time. Ofgem favour an approach where the development of an integrated agreement in the future would require a licence modification to be passed and could not be brought about simply by raising an amendment to the DCUSA.

Should it be optional for certain parties to accede to the Agreement?

Respondents' Views

2.35. The respondents to the December consultation who considered this issue agreed that it should be mandatory for all licensed network operators and all licensed suppliers to accede to the arrangements. The main differences of opinion centred on how to bring larger connected sites and licence exempt(ible) generators within the arrangements in a proportionate manner.

2.36. Some respondents considered that a threshold should be put in place above which it should be mandatory for generators or directly connected parties to accede. Others considered that accession to the document should be discretionary for generators, but if they wished to contract directly with the distributor for the transport of electricity, it should be mandatory for them to be a party. One respondent considered generators and large demand sites should be part of any discussion of governance changes that will affect them and should therefore be bound by the DCUSA or they may risk being disenfranchised. One of the respondents favouring a discretionary approach considered that attempting to define the size of an unlicensed party which should be bound by the document would be problematic and probably arbitrary. Another considered that it would be for loads and distributed generation to choose whether they wished to have a direct relationship with the distributor for use of system, or whether they wanted to rely on a supplier or other licensed party to act as an intermediary.

2.37. One party found it difficult to understand how some parties could have the option to accede to a DCUSA. Others were able to see a rationale, suggesting a parallel could be drawn between the DCUSA and the transmission CUSC. It was noted that under the CUSC, certain classes of party are exempt from acceding, but are still free to do so should they wish to. One party considered that there should be a requirement for parties to the document to be licence holders. A licence condition requiring licensees (suppliers and distributors) to become parties to the document was also recommended by one party.

2.38. Some respondents, maintained that issues relating to DG would be adequately represented through the 'supplier hub' principle and this principle should be incorporated into any multilateral arrangements.

Ofgem's View

2.39. Ofgem agrees with the majority of consultation responses that to further efficiency and inclusion, it should be mandatory for DNOs, and IDNOs receiving services or providing services under the arrangement to be party to the DCUSA.

2.40. Although Ofgem acknowledges a need for a licence condition on DNOs to produce, implement and maintain a DCUSA, Ofgem is considering whether it may be absolutely necessary to include a provision obliging suppliers (or other parties) to accede and comply with the DCUSA. Ofgem invites views on this particular issue, mindful that the mechanism used to make the transition from the DUoSA arrangements to the DCUSA should bring about a clear end to the existence of the DUoSAs.

2.41. Ofgem considers that it may be appropriate for DG parties to the arrangements to be involved in change management decisions only when those changes affect them. Ofgem considers that the fulfilment of this criterion ought to be discharged by such parties declaring an interest in a change proposal. Ofgem considers that if this self selection criterion was abused by members of the DG constituency that another party to the arrangements would be likely to raise an amendment to Part 1 of the DCUSA to address the problem. If such an amendment was raised Ofgem would consider the amendment in light of the facts of the amendment, the Applicable DCUSA Objectives and its own Statutory Duties.

Who should be able to propose change?

Respondents' Views

2.42. Prior to the publication of the December document, Ofgem and industry were in broad agreement that it would accord with the principles of fairness and good governance for parties to the DCUSA to be able to propose changes to it. It was also agreed that it might be appropriate for a Panel composed of industry participants to put forward certain proposals but that it would not be appropriate for Ofgem to raise amendments.

2.43. Early in 2005, the majority of parties indicated that they broadly agreed with Ofgem as to who should be capable of proposing change. The main source of differing opinion centred on whether energywatch should be capable of proposing amendments. One respondent considered that it was not appropriate for energywatch to have the right to raise proposals, whilst others, in stating that only parties with obligations under the document should be permitted to

raise proposals, implicitly suggested the exclusion of energywatch. Another respondent commented that energywatch, NG and ELEXON ought to have the ability to raise proposals although these bodies should not be represented on the Panel. One respondent favoured a variant of the 'proposer pays' approach for change management costs except for regulatory changes which could be funded by all parties.

2.44. Although Ofgem reiterated in the Impact Assessment that it anticipated both parties to the agreement and energywatch should be capable of proposing change, respondents did not comment on this issue to any significant extent. During discussions with parties following the consultation period of the Impact Assessment, the majority of parties suggested an approach where energywatch were able to raise amendments, and could possibly have a seat on the Panel but not to vote. It was suggested that this approach, which would be similar to that seen in the SPAA, would be an appropriate solution.

Ofgem's views

2.45. Ofgem concludes that energywatch and NG should have the ability to propose changes to the document in addition to parties to the DCUSA. This would be consistent with other governance arrangements such as the CUSC and BSC.

2.46. Whilst Ofgem recognises that proposals to change the DCUSA incur costs, Ofgem does not consider it would be in keeping with principles of good governance to impose charges on parties wishing to submit change proposals on the basis that doing so may give an advantage to better resourced parties. This approach is consistent with that taken in other governance arrangements.

Arrangements for a Panel, secretariat and voting

Respondent's views

2.47. In earlier consultations Ofgem suggested it would be appropriate for decisions to amend the industry led sections of the document to be reached by means of a representative Panel similar to that seen in the System Operator - Transmission Owner Code (STC) or the Master Registration Agreement (MRA). The size and general composition of the Panel in terms of there being

participants from the DNO, Supplier and IDNO communities has been the subject of a significant degree of consensus. In responses to the Impact Assessment, five parties provided clear support regarding Ofgem's views on the composition of a suitable Panel.

2.48. Most of the early differences of opinion centred around whether Panel members should be independent or representative and whether energywatch should have a role on the Panel. It was suggested by some parties that true independence is unrealistic in practice and is therefore a difficult ideal to attain. The issue of which subject areas the industry should have a decision making role over, and which areas should be reserved for Ofgem, was also an issue of some debate, as was the issue of DG representation in the voting arrangements.

2.49. During the earlier consultation and discussions about the election of Panel members and the basis upon which they should vote when on the Panel, it was suggested that either a one party one vote or an MPAN based system could be appropriate mechanisms.

2.50. Two respondents to the Impact Assessment favoured the Option D approach outlined in Ofgem's Impact Assessment. This option offered an MPAN voting mechanism for decision making. One supplier party considered that significant benefits would arise as a result of either Option C or D, but concluded that it preferred an MRA type model. One respondent was of the view that all industry members should be canvassed in relation to every proposed amendment and that the Authority should have no decision making powers other than in relation to appeals. Another suggested that Option A should be considered the appropriate way forward and did not support the introduction of multilateral arrangements.

2.51. In one response to the Impact Assessment it was argued that an industry agreement model (Option D in the Impact Assessment) would be more efficient than an industry code model (Option C) as it would help to ensure greater inclusion and coordination.

2.52. One respondent was concerned that small parties of any type would find it difficult to influence the arrangements proposed by Ofgem in its Impact Assessment (Option C).

2.53. One respondent did not favour either Option C or Option D, envisaging instead an Option E which would involve a Panel elected by constituents, but with Panel members which were not representative of any particular industry sector. It was suggested that elected members should be bound to represent the views of their constituents, but make their recommendations against defined objectives.

Ofgem's View

2.54. Having considered the views of industry Ofgem has concluded it would be appropriate to reduce the range of functions which the industry Panel would discharge from those anticipated in the Impact Assessment. It is Ofgem's view that the Panel and its supporting secretariat should only have responsibility for matters relating to the fair and expeditious analysis, presentation and process of amendments to the DCUSA. Accordingly, Ofgem proposes that changes suggested to Part 2 of the DCUSA should be capable of being voted upon by all parties wishing to participate (the referendum model).

2.55. The referendum model has an advantage over the other arrangements in that all parties are able to directly vote on a change (within their constituent classes) rather than having to rely on their views being represented by a Panel member. The referendum model enables all parties to have clear hands-on representation on every issue, should they choose to be involved. This voting mechanism, if appropriately defined, would also enable a greater degree of transparency by documenting the views of all parties and in so doing, help to ensure that the developments in the arrangements are appropriate for all participants. The referendum model also has the support of a number of key companies in the distribution arrangements which when coupled with the checks and balances described in subsequent paragraphs, would facilitate the arrangements in an appropriate manner.

2.56. Under the referendum model all parties would be invited to vote on each change proposal weighted by the number of connected meters or Meter Point

Administration Numbers (MPAN)[3] registered to that party (or equivalent). Votes would be cast on a constituency basis (the constituencies being DNO, IDNO, Supplier, and DG) and 65% of the votes cast within each constituency would be required. In the event that these voting thresholds were passed Ofgem considers it would be appropriate for a change to be considered approved and to move forward to the implementation stage. In the event that the voting thresholds were not passed, Ofgem anticipates that the change would be considered rejected. Setting the required support at this level should encourage consensus for change to be sought across constituencies and parties. The intention and potential effect is that rejected amendments would naturally fall away.

2.57. Ofgem expects parties to assess proposals against the Applicable DCUSA Objectives. This would help promote the appropriate development of the agreement by providing clear criteria against which changes are assessed. Ofgem considers this is of particular importance in the context of the commercial relationships between monopoly networks and their users as these classes of parties can have significantly different interests. The assessment of changes against easily referenced criteria would help to define the purpose of the DCUSA and changes to it. Ofgem would also expect parties to give reasons for their decision to vote in a particular manner against the Applicable DCUSA Objectives when participating in the change management and approval processes.

2.58. To guard against situations where bigger players have disproportionate control, Ofgem considers it would be appropriate to limit the voting strength of individual parties. Two mechanisms could be used to achieve this. The first of these is to cap an individual party's voting capacity to 20% of their constituency and redistribute the rest to the other parties. The second is the introduction of a second hurdle such that for a change to be approved, 65% of individual companies in each constituency would need to approve (in addition to there being 65% of MPANs in favour). Ofgem considers that by defining the referendum model in this manner an appropriate balance would be struck

[3] Or similar mechanism which enables the volume of energy dealt with by a particular party to be taken into account when assessing the weight which should be given to its vote.

between the need to ensure change can be efficiently developed and assessed, and the need to ensure all parties are adequately represented within the voting arrangements.

2.59. With regard to Panel recommendations for Ofgem to approve or reject amendments to Part 1of the DCUSA, (in cases where decision-making is a function discharged by Ofgem) similar arrangements would apply. Such recommendations would be made on the basis of a simple majority of the connected meters registered to the parties which took part in the vote. Ofgem considers it appropriate that in order to ensure transparency and inclusiveness of the process, the report to Ofgem should include a summary of the submissions made by all parties and the full text of their replies in an appendix.

2.60. The introduction multilateral of governance would facilitate the position of DG by better enabling the introduction of sector-wide developments which would have been more difficult for small parties to achieve under the bilateral arrangements. The voting model Ofgem proposes for decision making would therefore benefit the position of DG on the basis that the arrangements themselves facilitate the meaningful participation of smaller players through the development of an industry forum where changes can be progressed using shared industry expertise and resources and implemented on a sector-wide basis.

2.61. As a measure to alleviate the possible higher administrative burden on smaller players, Ofgem considers that it is particularly important in a referendum process that the process of change development and the voting arrangements themselves ensure that as far as possible key aspects of an amendment are easily understood, produced on an independent basis and referenced against the Applicable DCUSA Objectives. Ofgem also considers that ensuring changes which are likely to materially affect a particular class of party are held as reserved matters for Ofgem (as described elsewhere in this document) would also serve to protect the interests of such market participants.

2.62. A diagram illustrating the progression of an amendment and the relationship between the functions of the Panel and its secretariat, wider industry and Ofgem, can be seen in Appendix 2.

Proportionality, cost benefits and better regulation

Respondent's views

2.63. Several parties considered that any option introducing a multilateral agreement such as the DCUSA would impose a greater regulatory burden than Options A or B, noting also that fewer enhancements to the arrangements could be expected under Options A and B.

2.64. Only a minority of responses to the December document attempted to quantify the costs of the current arrangements and the costs they anticipated would arise under a multilateral framework.

2.65. The majority of respondents considered that a multilateral framework would be the most cost effective option, although only a minority of respondents offered significant detail as to the costs involved. A number of respondents suggested that the development of a consolidated document would provide savings to the industry and offset the costs associated with the production of the document in the short term. Two respondents suggested that overall costs would increase, one of these describing the significant cost increases it anticipated.

2.66. One party considered that, although Option A would provide a net benefit, the effectiveness of this option would diminish over time. It was also suggested that although Option B is zero cost in the short term, those benefits would be outweighed by long term inefficiencies. For these reasons the respondent concluded that a multilateral code envisaged in Option C would be the most effective option.

2.67. Other respondents did not consider a multilateral framework such as Option C would be the most cost effective option, two considering that there could be merit in Option A, which they suggested would provide the required benefits at minimum cost.

2.68. It was noted by many respondents that network operators should be able to pass through to consumers the costs incurred in establishing and operating an agreement. Most of the respondents to both the December consultation and the Impact Assessment, particularly the DNOs, were of the view that funding

should be recognised as an element of the DNO price control. A range of alternatives were suggested by respondents to the December document as to how costs might be recovered. One respondent considered the costs should be funded via the DNOs and recovered via distribution charges. Another suggestion put forward was that funding should be 50% on a MWh basis and 50% on a MPAN basis by the DNO, which would recover the cost through the use of system charges as allowable costs. Another respondent favoured a variant of the proposer pays approach for change management costs except for regulatory changes which could be funded by all parties. One respondent considered that the total costs should be shared by the constituent classes.

Ofgem's View

2.69. Ofgem agrees with the views expressed in responses to the Impact Assessment that Options A and B would not run the risk of increasing the regulatory burden on market participants, and that these options would be cheap in the short term in that the costs of standardisation (in the case of B) and setting up a new governance mechanism would be avoided. Whilst this is the case Ofgem considers that if the arrangements were to remain on a bilateral basis, the increased administrative and contractual burden which would arise as a result of market developments (such as those caused by the growth in IDNOs and DG) would be likely to outweigh any initial cost savings.

2.70. Ofgem recognises that the introduction of the DCUSA is likely to mean that parties may face more proposals for change than has been the case under the current arrangements. Ofgem considers that implementing changes has been so difficult to do on a bilateral basis that many changes which would have been beneficial to the sector have not been made. The arrangements proposed in this conclusions document ensure that changes can be developed efficiently. Insofar as the proposed arrangements are consistent with other codes and agreements in operation, Ofgem considers that sufficient safeguards exist to militate against the risks of a proliferation of spurious proposals.

2.71. Costs arising as a result of the new multilateral arrangements could be grouped into three types; set up costs (i.e. costs associated with the introduction of the new arrangements), on-going administration costs (i.e. costs associated with

secretariat services), and change proposal costs (i.e. costs associated with developing and implementing amendment proposals).

2.72. In relation to set up costs Ofgem notes that industry members have been working on a self funding basis (under the auspices of the DCF) to consolidate the existing arrangements and divide them into aspects that should apply bi-laterally, those which should apply multi-laterally. In relation to the multi-lateral aspects, work is also underway toward agreeing which elements should be decided by industry and which should be considered reserved matters and decided by Ofgem. Once this work has been completed there will be legal costs to convert this document into a multiparty contract. It has been suggested that this should not cost more than £100,000. This amount divided between the fourteen DNO networks equates to a little over £7,000 per licence. Ofgem considers that it would appropriate for the DNOs to absorb this cost.

2.73. To date, it has been difficult to establish what the ongoing administration costs are likely to be, but Ofgem anticipates they would be kept to a proportionate level provided they were under the control of the participants. Ofgem suggests that this could be achieved by implementing appropriate efficiency measures. With reference to the analysis undertaken under the Impact Assessment, Ofgem anticipates that if developed in a proportionate manner, the ongoing administration costs would not be significant and the new arrangements would be cost neutral, if not a cost saving when compared to the sum of the costs of individual companies having to administer the current arrangements. Ofgem therefore concludes that there is no need for additional allowances to be made for these costs, although should they prove to be significantly more than those Ofgem and the majority of industry expect this position could be reviewed in the future.

2.74. In terms of change proposal costs, the nature and extent of these costs are by their nature difficult to assess in advance as they would depend on specific changes brought forward and approved in future. Some of the costs of changes are likely to fall on distribution companies and other costs may well fall on other market participants. Costs falling on suppliers and generators would be subject to recovery in competitive markets. The revenues of the distribution companies are subject to price controls. There is scope to increase the

revenues allowed under the price controls to pass through costs arising from changes to the DCUSA, either through special condition B2(5) of the current DNO price control or through modifications to the price control. Any DNO can apply to Ofgem for pass-through under either of these routes. In reaching a decision, Ofgem would need to consider the particular circumstances of each case, but would not expect to change the price controls unless the costs were material and the change was demonstrably of benefit to consumers' interests.

Responsiveness to future market developments such as those in DG and IDNOs

Respondents' Views

2.75. In the December consultation, Ofgem's preferred option was to move to a code-based governance model along the lines of the CUSC and the BSC. Comments from parties suggested that the introduction of new arrangements would resolve the current fragmented approach to industry change, enabling a structure able to deal effectively and efficiently with changes as they arise in the future. It was suggested that including DG above a certain size would add transparency and lower overall costs via more efficient administration of commercial arrangements. It was suggested that efficiency would be better served if IDNO's provided the same primary terms for use of system as incumbent DNO's and this could be best done under a multi-party framework.

2.76. One respondent considered that for future market improvements to have the best chance of implementation, equal voting rights irrespective of size or market share would be necessary.

2.77. There were two respondents to the December consultation which did not consider arrangements proposed by Ofgem at the time would be the best way to cope with future market developments. One suggested that such a move would increase the administrative burden on small parties and they would not gain any increase in influence in the arrangements. Another considered a more appropriate way to cope with future market developments would be by way of discussion of the issue at an informal forum.

2.78. Some respondents expressed concerns that under a bi-lateral system, divergences between contracts may increase owing to the greater number of IDNOs and DG connections. To this end, one respondent considered that without centralised governance there would be nothing to prevent the bilateral agreements diverging in the future. The respondent was not confident that an informal forum would be able to ensure a standardised approach was maintained.

2.79. Another agreed and said that neither Option A nor B were viable options. It was suggested that creating a standardised DUoSA may have merit but this would create only a temporary period of uniformity were Option A introduced and that growth in DG would stimulate this divergence.

2.80. In the Impact Assessment, Ofgem suggested that given the growing importance and amount of such generation it might be appropriate for DG to have a presence within the voting structure of the arrangements. Few respondents commented on this issue.

Ofgem's View

2.81. Ofgem agree with the majority of respondents to the December document and the IA that to avoid fragmentation and divergence of development on issues such as those relating to the growth DG and the increase in the number of IDNOs, a move to a multilateral framework is essential.

2.82. Although Ofgem's view as to the appropriate change decision mechanism to be used by industry has altered following its consultation documents, Ofgem remains of the view that a DCUSA would be better placed to cope with future market developments and would facilitate the development of changes benefiting DG across the distribution arrangements to a greater extent than would have been possible under the bilateral arrangements.

2.83. Ofgem does acknowledge that the voting mechanism proposed in relation to Part 2 of the DCUSA is not as likely to result in the implementation of changes to further the particular interests of classes of small players as other mechanisms might have done. Whilst this is the case, the dual hurdle voting arrangements offers better safeguards against the implementation of changes to

the detriment of one class of party when compared to other alternative voting arrangements. Ofgem also notes that should a party feel that a particular issue should be addressed within Part 1 of the DCUSA rather than Part 2, it would be for that party to raise an amendment to Part 1.

2.84. As a measure to alleviate the possible higher administrative burden on smaller players, Ofgem considers it particularly important in a referendum process that the process of change development and the voting arrangements themselves ensure that as far as possible key aspects of an amendment are easily understood, produced on an independent basis and referenced against the Applicable DCUSA Objectives. In this respect, the change assessment procedures of the DCUSA would serve to address issues arising from the asymmetry of resources between the larger and smaller parties to the DCUSA.

2.85. Ofgem considers that under the proposed arrangements, DG should only vote on matters affecting that class of party.

Appeals

Respondents' Views

2.86. The majority of parties offered views on what might be an appropriate appeals mechanism and there has been a broad level of consensus on this issue.

2.87. Where amendment decisions are made by Parties to the agreement, respondents have shown support for a right of appeal to Ofgem. Some respondents suggested that appeals should be heard by a forum in the first instance and then by Ofgem if a party or parties still felt sufficiently aggrieved. Others suggested that appeals should come directly to Ofgem and there should be no requirement for a forum.

2.88. Where Ofgem takes the final decision on a proposal to change the document, industry agreed that an appeal right to the Competition Commission would be consistent with other governance frameworks. One respondent to the December consultation suggested that it would be more economical for smaller players if an independent arbiter could hear appeals in the first instance and

that escalation under the Energy Act to the Competition Commission should be a last resort.

Ofgem's views

2.89. With regard to Ofgem having an appellate role in cases where it is not the final decision maker, Ofgem notes that such an approach would be consistent with existing governance models such as the MRA and SPAA. Whilst this is the case, Ofgem is mindful that the grounds for appeal used in relation to those documents are not identical to the grounds on which the original decision was taken. This could lead to inconsistencies of approach.

2.90. In terms of better regulation, Ofgem considers it preferable to decide appeals to Part 2 decisions against the Applicable DCUSA Objectives and its statutory duties. Ofgem considers that the best way to achieve the required consistency and efficiency would be to enable parties who feel aggrieved by a Part 2 decision, to raise an amendment to Part 1, thus allowing Ofgem to consider the issue against the Applicable DCUSA Objectives and where appropriate, its Statutory Duties. Ofgem notes this makes the demarcation of which matters should be included in Part 1 and which should be included in Part 2 an endeavour of particular importance. This mechanism also ensures that matters which are found to be, or become, key issues in the future can be dealt with in an appropriate manner. Likewise issues that the parties and Ofgem agree are no longer necessary clauses in Part 1 can be moved to Part 2. This provides a flexible approach, enabling lighter- touch regulation where there is consensus and where it is appropriate.

2.91. With regard to appeal of decisions to Part 1, where Ofgem is the final decision maker, Ofgem considers that consistency with existing governance models should be maintained, and Ofgem decisions should not be appealed to an independent arbiter. Ofgem notes that it would be a matter for the DTI to consider whether decisions on the DCUSA taken by Ofgem in relation to Part 1 could be appealed to the Competition Commission.

3. Ofgem's proposed governance model

3.1. This chapter details the features of the model which Ofgem considers appropriate for inclusion in a multilateral DCUSA. Should a CLM be passed putting in place a requirement to develop such a document, Ofgem intends that these features be borne in mind during the process of development.

3.2. The issues described in this Chapter 3 have been developed to provide a minimum level of detail on key issues and the approach which Ofgem considers should be followed in relation to them. During the development of the DCUSA Ofgem may indicate additional features it considers appropriate for its designation. Although not intended to be exhaustive, the contents of this section should be considered as a framework to build upon when developing a set of multilateral arrangements.

3.3. In considering this model Ofgem has given consideration to the work of industry groups, the responses to Ofgem's consultation paper published in December 2004, the responses to Ofgem's Impact Assessment published in May 2005, its statutory duties and the views of industry participants articulated during industry meetings.

The DCUSA

3.4. The DCUSA arrangements could follow a similar structure to that of the Unified Network Code for gas, where each network operator has in place its own short-form agreement (possibly a single page) that references all the terms and conditions of the DCUSA. Although Ofgem is currently minded to follow this route, we invite industry to consider, should a CLM be passed, if this would be the best option or whether an alternative would be more appropriate.

3.5. The consolidated DUoSA would be divided in order to form the two parts of the DCUSA. Ofgem anticipates that Part 1 would contain matters which fall under the reserved decision making capacity of the Authority, whilst Part 2 would be determined by the industry.

3.6. Part 1 would generally set out the obligations which parties must meet, whilst Part 2 would detail the way in which they should be met.[4] Subsidiary sections would either underpin a requirement in Part 1, (and although it would include more detail than Part 1, would not exceed the obligations set out in Part 1). Part 2 would also detail processes where a typical industry approach to an issue exists but which is not underpinned by a requirement in Part 1.

3.7. The appropriate criteria to identify which terms were suitable for decision by Ofgem or by industry would include but would not necessarily be limited to: whether the term was likely to have a material/ significant detrimental impact on consumers or a class of company, whether the term related to the safety and security of the network, whether the term was intended to change the governance arrangements, or whether the term was one which the parties agreed should be determined by Ofgem.

3.8. Following due process, clauses, and even sections in Part 2 may be created, deleted, amended or replaced, but they must be consistent with Part 1 of the agreement, and not impose any new obligations or restrictions of a material nature on signatories that are not envisaged by Part 1.

3.9. Standard connection terms obtained by suppliers on behalf of DNOs would be included in the DCUSA. Measures designed to promote uniformity of non standard connection agreements could be included subject to the agreement of the parties.

3.10. Certain provisions in the document may be applied bilaterally. Part 2 may contain templates as to the form such bi-laterals should take, but the detail of such bi-laterals shall remain matters to be agreed upon between the parties within the scope of the legal obligations upon them.

[4] Subsidiary documents typically define matters such as the relationships between the parties, detailed methods of meeting obligations, what information should be exchanged between those parties and the timeline along which such information should be exchanged.

Parties to the agreement

3.11. DNOs, and IDNOs would be mandatory signatories to the document. Accession could be optional for all other parties, although as indicated in Chapter 2[5] Ofgem considers this issue a matter for further discussion.

Accession

3.12. All parties that are currently party to a bi-lateral DUoSA agreement would terminate that agreement and should be able to accede to the DCUSA as from the Go Active date. Under the terms of the CLM, industry would be required to make provision for transitional arrangements which bring a clear end to the DUoSA arrangements.

3.13. Parties should be able to accede to the DCUSA in the future by applying to the Panel and entering into an accession agreement.

Accessibility

3.14. An accurate and up to date version of the document would be made available on a document web site, which would be maintained by the Secretariat.

Provision of Information to the Authority

3.15. The Panel would be required to collect and provide Ofgem with all relevant information as and when Ofgem may request it. Relevant information would be information that a Party would be required to divulge to the Panel or the Secretariat pursuant to the DCUSA or information that may be derived from any such information pursuant to the DCUSA.

[5] 2.40

Panel Composition

3.16. The Panel would be composed of

- Four members appointed by the Distribution Network Operators (the DNO Panel Members),
- One member appointed by the Independent Distribution Network Operators (the IDNO Panel Member),
- Four members appointed by the supplier businesses (the Supplier Panel Members)
- One member appointed by the DG businesses (the DG Panel Member)
- One non voting independent chairperson appointed by Ofgem.

3.17. Ofgem would have the ability to appoint a further seat in the event that it became clear a class of party was inappropriately underrepresented.[6]

3.18. Panel members would act independently and not as delegates. Panel members would be bound to act in a manner so as to better facilitate the achievement of the Applicable DCUSA Objectives.

3.19. The following parties may contribute to the discussions provided their comments are framed with regard to the Applicable DCUSA Objectives, but not vote:

- the GB System Operator
- energywatch
- BSCCo (upon invitation)
- MRASCo (upon invitation)

[6] This is consistent with all other industry codes and agreements.

Panel Elections

3.20. Elections to the Panel would take place biennially.

3.21. Panel members could be elected by one of two mechanisms. Under the first, the company voting model, each business in a particular constituency may propose to the Secretary one candidate for election as a Panel Member for that constituency. The Secretary would notify the list of candidates to each party. Where there are more candidates than Panel seats available for a particular constituency, the parties in the relevant constituencies would be invited to cast votes for their favoured candidate. Each party would have one vote for each category for which it is eligible to vote. Under the second model, the connected customer model, elections could take place on the basis of a mechanism similar to that used to vote Supplier Members onto the Management Executive Committee in the MRA. In relation to this particular issue, Ofgem invites the relevant industry communities to agree an approach during the development of the DCUSA.

3.22. If at any time a category of party fails to provide a DCUSA Panel Member, the Secretary would request the Authority to make an appointment and the Authority would have the power to appoint a representative until the category of party has decided upon an appointment.

3.23. A list of at least three Panel alternates should be established.

3.24. Panel members should be considered elected individuals; seats are held by those individuals not the companies which employ the Panel member. In the event that a Panel member leaves the Panel a replacement should be sourced from the list of alternates until the next Panel election.

Role of the Panel

3.25. The Panel and its supporting secretariat would have responsibility for

- efficient, fair, economical and expeditious operation of the amendment procedures and the processes which apply to them,

- co-ordination of the development of amendments to the Agreement (including the establishment of working groups where appropriate),
- development of the documentation summarising relevant matters for consideration by the industry (and/or the Authority in the event that a decision in relation to an amendment needs to be taken by the Authority),
- development and oversight of the mechanism used to distribute such documents to industry,
- development and oversight of the mechanism which receives and collates the votes cast by industry in relation whether to approve or reject an amendment described in such documents,
- informing industry parties of the results of such a vote,
- establishment of joint working arrangements with other relevant industry committees and panels and facilitating the robust co-ordination of the implementation of any consequential changes,
- publication of modifications to the agreement in an efficient, economical and expeditious manner,
- decisions on the expedited treatment of amendments directed against the terms which were reserved matters for industry, and
- identifying and raising amendments which may be necessary to ensure that Part 2 of the DCUSA reflects the obligations expressed in Part 1.

3.26. The Panel would act in a manner consistent with better facilitating the achievement of the Applicable DCUSA Objectives when discharging these functions.

Establishment of Working Groups

3.27. Should the Panel consider it appropriate, a group of industry experts may be established to evaluate an amendment proposal. One group may evaluate

more than one proposal at the same time. Working groups must be quorate. Any Agreement signatory can send an attendee to any group meeting.

3.28. The Panel would select group members from a standing list and/or applicants based on their experience and expertise. It may add members at any time. It may also remove them if they are considered to be a persistently disruptive influence on the work of the group. Group members need to be available throughout the assessment.

3.29. It would accord with good governance for the group to have terms of reference set by the Panel. The group would determine its own working procedures for conducting its business – these would be published, along with its terms of reference, timetable for business, and details of its composition. The group would assess an amendment against the Applicable DCUSA Objectives and work with the secretariat to produce a report which would be subsequently sent out for review by the parties and against which parties would ultimately vote to approve or reject an amendment or to recommend its approval or rejection by Ofgem. A disclaimer would protect the group from the risk of errors in its reports or considerations.

3.30. Ofgem may also attend and speak, though its comments may not be taken to be binding on its future decisions.

Amendments

3.31. The Agreement may be amended from time to time where allowed by the relevant Licence.

3.32. Decisions or consents to approve or reject changes would be communicated to all agreement signatories, each member of the Panel administering the agreement, Ofgem, the agents or service providers (if any) used by the secretariat to deliver its services, and other core industry document owners.

3.33. The Panel must establish and maintain a publicly available register on the DCUSA website tracking the progression of each amendment proposal. This register would contain information such as who raised the proposal, what it was intended to do, whether it has been approved or not; its implementation or

progress toward implementation (where relevant); and such other matters as the Panel considered appropriate from time to time.

3.34. A proposal to amend the Agreement may be made by one of a designated list of stakeholders including a signatory to that Agreement, energywatch, the GB System Operator and any interested third party designated by the Ofgem.

3.35. The party submitting a proposal would include the mandatory basic content of a modification proposal (description, basic justification against the Applicable DCUSA Objectives etc).

3.36. In some circumstances an amendment proposal may be refused a hearing. For example if the amendment;

- does not comply with the form specified,
- is substantively the same as either an approved modification that is awaiting implementation or a modification that was rejected within the last two months, or
- is outside the scope of the DCUSA.

3.37. The secretariat would prepare an assessment of a proposal and present it to the next Panel meeting.

Urgent Amendments

3.38. Decisions as to whether to treat amendments directed at terms in Part 1 on an urgent basis would be taken by the Authority. In the event the Authority decided to grant urgency, the Panel would agree (via whatever manner deemed appropriate) an appropriate timetable for the progression of the amendment which would be subject to the approval of the Authority. The Panel would document the timetable and the procedures undertaken for evaluation of the proposal.

3.39. Best endeavours must be taken to ensure the most expeditious assessment and (where relevant) implementation of an urgent proposal. For the avoidance of

doubt, this would include the implementation of a change on the same day that a proposal was submitted.

Consultation

3.40. Any amendment raised and agreed to be a valid amendment by the Panel would be communicated to all parties to the Agreement.

3.41. Where appropriate consultation would occur during the development of an amendment in order to ensure that the solution developed was sufficiently well-defined and took into account relevant issues.

3.42. Industry participants would be responsible for the development and implementation of an automated system which would send amendments to consultation at the appropriate stage in the development process and which would collate the votes of the relevant industry parties.

Industry led decision making voting process

3.43. Proposals to approve or reject amendments could be voted on by any party to the agreement which wished to cast a vote. Votes would be cast by parties within a relevant constituency (these being DNO, Supplier, IDNO and DG). DG parties to the arrangements would only be involved in change management decisions which affect them. This right to vote would be invoked by such parties declaring an interest in the relevant change proposal.

3.44. A dual hurdle process of voting would be used. This dual hurdle process would take into account both the number of companies either in favour or against an amendment and the number of customers those companies represented.[7] To approve a particular change, more than 65% in every constituency in relation to both companies and customers, would be required. To minimise situations where bigger players would have disproportionate control, an individual party's voting capacity would be capped at 20% of their constituency and any votes in excess would be redistributed to the rest of the other remaining parties. Where all constituencies agreed that an amendment

should be made, that matter would be considered approved. Where there was not this level of agreement, the amendment would be considered rejected.

3.45. Similar arrangements would be used for recommendations to approve or reject amendments to Part 1 of the DCUSA, although a simple majority, based on the number of customers represented, would be used in preference to the dual hurdle system described above.

3.46. In all cases decisions would be based upon and referenced against the Applicable DCUSA Objectives.

Role of Ofgem

3.47. Ofgem would serve as a decision-maker in relation to amendments made to Part 1 of the DCUSA and would take decisions in relation the urgent treatment of amendments made to Part 1 of the DCUSA. The Authority would have regard to the Applicable DCUSA Objectives and its statutory duties whilst performing these functions.

3.48. Ofgem would have the right to attend meetings, but its comments would not be binding on its future decisions.

Implementation

3.49. The Panel is responsible for making changes to the agreement which result from decisions arrived at by either Ofgem or industry with effect from the appropriate implementation date.

3.50. Parties to the Agreement must use reasonable endeavours to implement any changes required to meet the implementation date.

3.51. The Secretariat would promptly report to the Panel if it reasonably believes that Parties will, or may, fail to make necessary changes in time. Such a report would be immediately communicated to all parties.

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[7] For example an MPAN based voting mechanism, or other arrangement achieving a similar effect.

3.52. The Panel can request that an implementation date be pushed back or brought forward if evidence from the DCUSA administrator and/or DCUSA signatories suggests that implementation may either not be possible by the existing implementation date, or that the changes are capable of being given effect earlier. Implementation dates may be pushed back or brought forward with the approval of, or at the direction of, Ofgem.

Appeal mechanisms

3.53. Industry have suggested that Part 1 of the document (over which Ofgem would hold decision making responsibility) should be capable of appeal to the Competition Commission. Ofgem notes that this is ultimately a decision for the DTI.

3.54. For reasons expressed in Chapter 2, namely to achieve a consistent approach and efficient process, Ofgem prefer not to provide an appeal mechanism against decisions made by industry on Part 2 of the Agreement. Instead a participant who feels aggrieved by a decision made under Part 2 can have the option of indicating to the Panel their intention to propose an amendment to bring the issue into Part 1 of the DCUSA. In this way Ofgem can make a decision in the normal way against the Applicable DCUSA Objectives and where appropriate, its statutory duties. The Party would need to provide a justification according to the Applicable DCUSA Objectives. The full documentation of the process up to that point, including appropriate adjustments to the legal text to give effect to the Party's intention would then be forwarded to Ofgem for a decision.

Measures ensuring the development of proportionate arrangements.

3.55. Ofgem considers it appropriate that the DCUSA should provide a solution proportionate to the defect acknowledged by industry and Ofgem during the development of this project. To this end, Ofgem invites industry to consider how appropriate cost-savings might be made. In regard to this specific area Ofgem invites industry to further consider this issue during the development of the DCUSA. Ofgem suggests that the parties paying for the ongoing

administration costs of the DCUSA should specify carefully the standard of performance considered appropriate for the Secretariat and, if appropriate, tender for the services required.

Confidentiality

3.56. All representations made during the assessment of change would be made publicly available by the Secretariat unless confidential treatment is requested by the submitter in writing. A disclaimer would protect the Secretariat and Panel from the risk of erroneous publication of confidential data. All representations (whether or not marked confidential) would be made available to Ofgem.

4. Next Steps

4.1. Further to these conclusions and the work completed by the Consolidation Group, these two strands can now be brought together as indicated in the Impact Assessment in May. The draft CLM appended to this document will need further refinement in the light of comments received and it is anticipated that the CLM could be in a position to be formally proposed for consideration by DNOs and IDNOs before Christmas with an extended period for consideration allowing for the Christmas holidays or early in January 2006, depending on the nature of comments received.

4.2. A number of respondents have indicated the need for a detailed plan of activities as the arrangements take shape to ensure that all affected parties are aware of the changes and are able to effectively participate. Ofgem agrees that a detailed plan is desirable and will provide parties with any assistance it can by participating in any Steering Group that might be established following a successful CLM.

Appendix 1: Possible licence drafting for licence condition 9B

1.1 The following paragraphs have been included to invite views from industry on Ofgem's draft proposed text for a CLM. Parties are invited to provide suggestions as to how the licence drafting below might be adapted such that it would better encapsulate the intention of this conclusions document as expressed in Chapters 2 and 3. Ofgem requests that any suggested amendments, along with an accompanying rationale, should be sent to David Edward by 7 December 2005.

1.2 This document is an Ofgem conclusion document. Accordingly, comments are not invited on the content or general policy conclusions outside this Appendix 1. A specific exception to this is the content of paragraphs 2.40, which also relates to licence drafting.

Condition 9B: Distribution Connection and Use of System Agreement

Part A: Purpose

1. The purpose of this condition is to secure that the licensee in conjunction and co-operation with every other relevant electricity distributor**:**

   (a) prepares a Distribution Connection and Use of System Agreement (the "DCUSA") which conforms to the requirements of paragraph 4, and 5; and

   (b) implements the DCUSA within 6 months of the coming in to effect of this condition ("the due date") and maintains the DCUSA at all times thereafter.

2. The licensee must be compliant with the DCUSA at the due date and remain compliant with the DCUSA as modified from time to time thereafter in accordance with this condition.

Part B: General description of the DCUSA

3. Without prejudice to any other necessary attributes, the DCUSA shall be the document of that name which**:**

   (a) includes the contents referred to at paragraphs 4 and 5;

   (b) makes provision for the matters set out at paragraph 6 in respect of governance and administration, and for the matters set out at paragraph 14 in respect of other matters;

   (c) is so designed in respect of those contents and those matters as to meet, the requirement of paragraph 7;

   (d) is designated, by direction of the Authority, in accordance with the provisions of Part F; and

   (e) may from time to time be modified in accordance with the provisions of Part G.

Part C: Principal contents of the DCUSA

4. The DCUSA shall

(i) include such material terms, procedures, and arrangements of a commercial nature as relate to the use of the licensee's distribution system and (where appropriate) connections to that system; and

(ii) make (without prejudice to the foregoing) express provision for**:**

(a) the conditions (including as to the provision of credit cover) which are to apply to any person in respect of the commencement, continuation, or termination of use of the licensee's distribution system by or on behalf of that person ("the user"), and the obligations owed by the licensee to the user in relation to use of that system;

(b) the terms, arrangements, and procedures which are to apply or to be available to the user in respect of the payment and/or adjustment of the charges due on either an individual or an aggregated basis to the licensee from the user for use of the licensee's distribution system;

(c) the terms, arrangements, and procedures which are to apply or to be available to the user in respect of such activities or works (including the energisation, de-energisation, or re-energisation of exit points) as may be carried out by or on behalf of the user on the licensee's distribution system;

(d) the terms, arrangements, and procedures which are to apply or to be available to the user in respect of the activities of system demand control and revenue protection, the installation and maintenance of metering equipment, and the provision of metering data and other relevant information arising from use of the licensee's distribution system; and

(e) the terms providing for:

(i) the circumstances in which, in relation to the use of or connection to the licensee's distribution system, a party's liability for any contravention of the provisions of the DCUSA may be restricted, and

(ii) the extent to which and the circumstances in which such liability will otherwise attach to that party in respect of any claims against it.

5. The text of the contents required to be included in the DCUSA at the due date by virtue of this Part C shall, with necessary adaptations, and save to the extent directed otherwise by the Authority, be the same as the text which in each case comprises the corresponding contents of the consolidated agreement for the use of system developed through the joint activities of the relevant electricity distributors and users immediately before the due date.

Part D: Governance and administration

6. Without prejudice to the matters required to be included by virtue of Part C, the DCUSA shall also comprise**:**

(a) the terms for the creation of an agreement, to which the licensee, every other relevant electricity distributor, and any other authorised electricity operator (not being a relevant electricity distributor, and insofar as the DCUSA is applicable to it) shall be a party on such terms and conditions of accession as may be specified ("DCUSA Accession Agreement");

(b) the provisions for the referral for determination by the Authority of any dispute arising as to whether a person seeking to be admitted as a party to the DCUSA Accession Agreement has fulfilled any such accession conditions;

(c) the terms providing for the licensee and such other parties to the DCUSA Accession Agreement as may be specified to be contractually bound by some or all of the provisions of the DCUSA;

(d) the arrangements for establishing, in accordance with such procedures for appointment or election as may be specified, a panel (the "DCUSA Panel") which is to be responsible, by way of such proceedings as may be specified, for the governance and administration of the DCUSA, and whose members are to be required as a condition of appointment or election to act independently and not as delegates;

(e) the arrangements for the establishment and funding of a secretariat able to service the DCUSA Panel, to such extent and in respect of such matters as may be specified;

(f) the procedures for the modification, in accordance with Part G, of such provisions of the DCUSA as are specified to be capable of being modified without the prior approval of the Authority;

(g) the provisions by virtue of which such parts of the DCUSA as may be specified shall not be capable of being modified without the prior approval of the Authority; and

(h) such other matters as may be appropriate to be included in or provided for by the DCUSA having regard to the requirement of paragraph 7.

Part E: The Applicable DCUSA Objectives

7. The requirement of this paragraph is that the matters contained within or provided for by the DCUSA pursuant to Parts C and D must be such as are calculated, to facilitate achievement of the following objectives**:**

(a) the development, maintenance, and operation by the licensee of an efficient, co-ordinated, and economical distribution system;

(b) the facilitation by the licensee of effective competition in the supply and generation of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity;

(c) the efficient discharge by the licensee of the obligations imposed upon it by this licence; and

(d) the promotion of efficiency in the implementation and administration of the DCUSA arrangements.

8. For the purposes of Part G, the above objectives are referred to there as "the Applicable DCUSA Objectives".

Part F: Designation of the DCUSA

9. Where the Authority is satisfied with the DCUSA as prepared by the licensee it shall designate the DCUSA for the purposes of this condition generally.

Part G: Modification of the DCUSA

10. The DCUSA as designated by the Authority in accordance with Part F may be modified at any time thereafter in accordance with such modification procedures (including procedures for modifying those modification procedures themselves) as may be specified and are in conformity with the principles set out in paragraph 11.

11. Those principles are that**:**

(a) the power to modify the DCUSA in respect of any matter specified for the purposes of paragraph 6(h) can only be exercised with the prior approval of the Authority;

(b) the proposals for the modification of the DCUSA may be made by any relevant electricity distributor, by any other party to the DCUSA Accession Agreement, energywatch, the GB System Operator, and by such other persons or bodies as may be specified by the Authority; and

(c) the modification procedures, where such a proposal is made, must provide for**:**

(i) the bringing of every modification proposal to the attention of all parties to the DCUSA Accession Agreement and of such other persons as may have an appropriate interest in it,

(ii) the proper consideration of any representations made about the proposal,

(iii) properly evaluating whether the proposed modification would better facilitate the achievement of the Applicable DCUSA Objectives,

(iv) the preparation of a modification report, in such manner and having all such contents as may be specified including a proposed implementation date which should be such as will enable the modification to take effect as soon as practicable after the decision to implement the modification has been reached taking into account the complexity, importance and urgency of the modification and for that timetable to be altered with the consent of or as directed by the Authority, and

(v) terms enabling the parties to the DCUSA having considered whether a modification set out in that report would, as compared with the existing provisions of the DCUSA, better facilitate the achievement of the Applicable DCUSA Objectives to vote either for or against

(a) the implementation of a proposed modification and for those votes to be compiled such that a decision to implement or reject an amendment can be made, or

(b) a recommendation to approve or reject a proposed amendment and for those votes to be compiled such that a recommendation can be made to the Authority that it should either approve or reject a particular amendment.

12. The licensee shall make and implement only such modifications where

(a) the parties to the DCUSA have voted in favour of an amendment described in an amendment report prepared pursuant to the procedures described in paragraph 11(c)(v), the licensee shall make and implement that modification; or

(b) if the amendment is in respect of a matter specified for the purposes of paragraph 6(h) and the parties to the DCUSA have provided a recommendation to the Authority to either approve or reject an amendment described in an amendment report prepared pursuant to the procedures described in paragraph 11(c)(v)(b), the Authority may issue written directions requiring the licensee to revise the DCUSA in such manner as may be specified in the directions, and the licensee shall comply with any such directions.

Part H: Other matters

13. In relation to any industry documents to which the licensee is a party or holds rights in respect of amendment, it shall take all appropriate steps within its power, and in accordance with the procedures applicable under or in relation to that document, to secure and implement such changes to the document as are necessary to give full and timely effect to, or are consequential upon, any modification of the DCUSA, and shall not take any steps to prevent or unduly delay such changes.

14. Without prejudice to Parts C, D and G, the DCUSA must also provide for**:**

(a) a copy of the DCUSA to be supplied to any person requesting it, upon payment of an amount not exceeding the reasonable costs of making and supplying such a copy;

(b) information about the operation of any of the DCUSA arrangements to be supplied to the Authority and/or to be published by it or by the DCUSA Panel (having particular regard to the provisions of section 105 of the Utilities Act 2000); and

(c) the DCUSA Panel to be able to secure the compliance of any party to the DCUSA Accession Agreement with any of the requirements of this paragraph, if and in such manner as the Authority directs.

Part I: Interpretation

15. In this condition, unless the context otherwise requires**:**

"approval" means approval in writing;

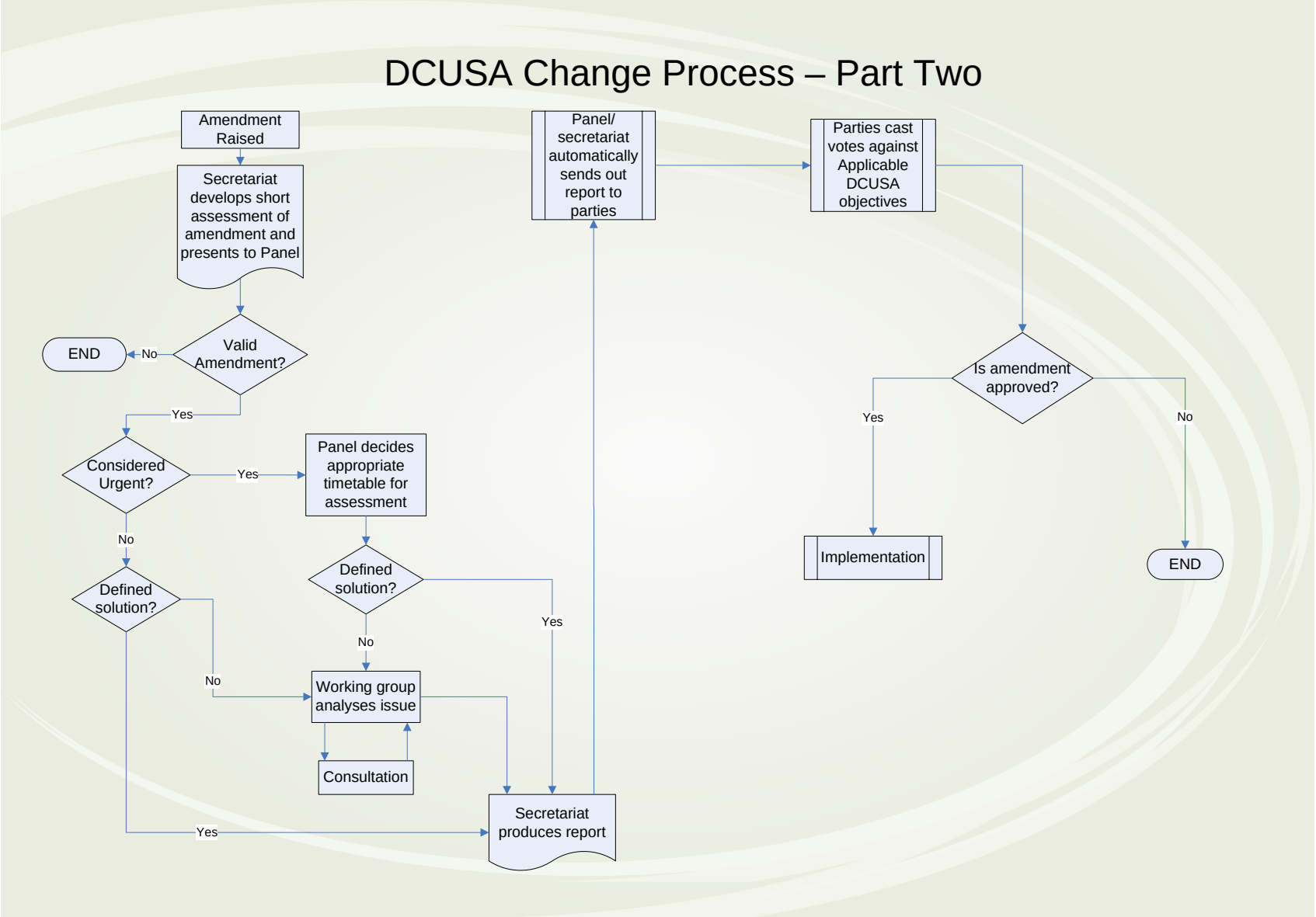
"direction" includes an approval or a consent;

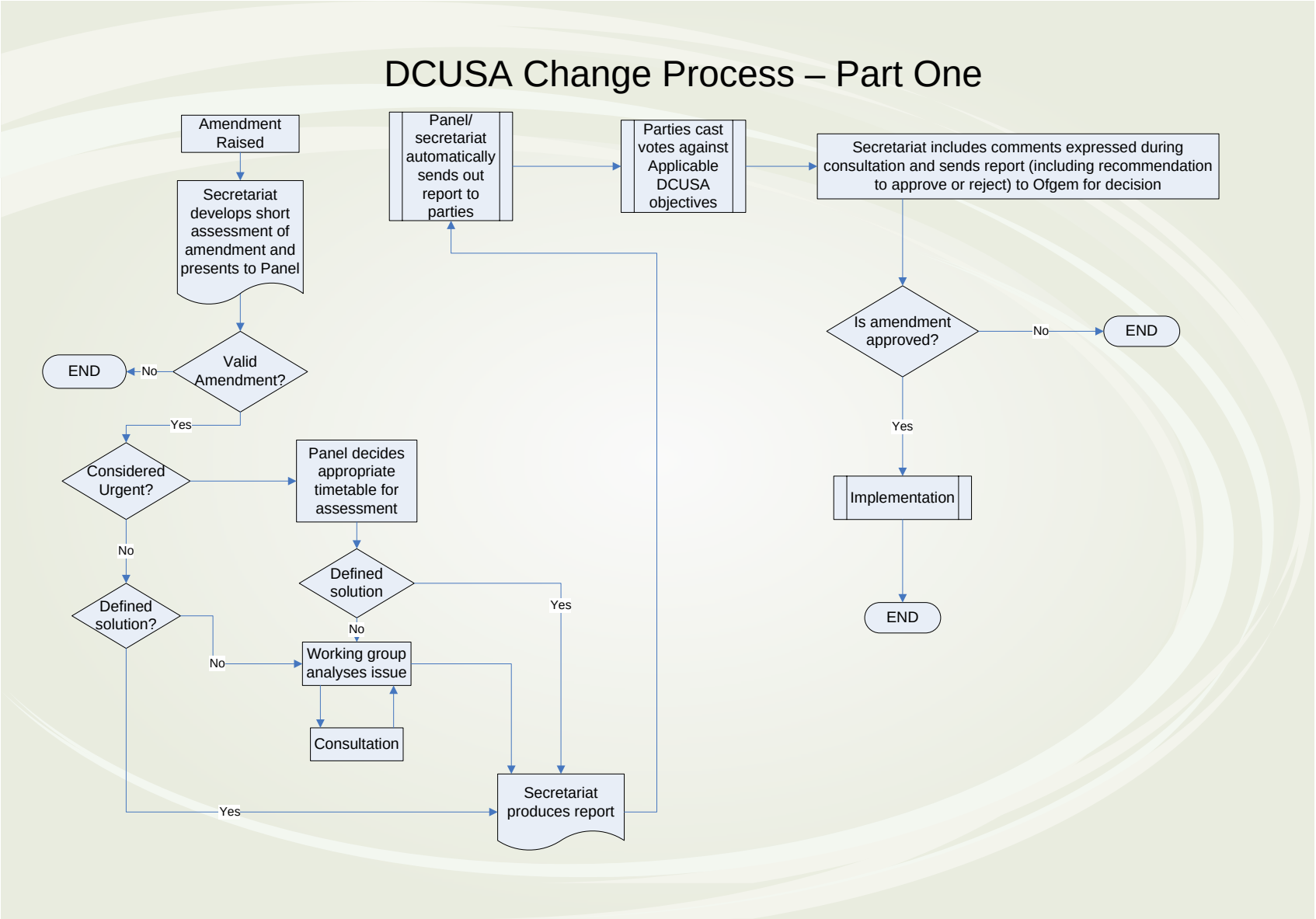
"industry documents" includes
(a) the Balancing and Settlement Code,
(b) the Connection and Use of System Code,
(c) the Distribution Code,
(d) the Grid Code (including any Scottish Grid Code),
(e) the Revenue Protection Code,
(f) the System Operator Transmission Owner Code,
(g) the Master Registration Agreement, and
(h) any other document designated by the Authority for the purposes of paragraph 13 following consultation with the licensee.

"relevant electricity distributor" means an electricity distributor in whose licence this condition has effect; and

"specified" means specified in the DCUSA.

Appendix 2: Process flow diagrams




DCUSA Change Process – Part One
Amendment Raised
Secretariat develops short assessment of amendment and presents to Panel
Valid Amendment?
No
END
Yes
Considered Urgent?
Panel decides appropriate timetable for assessment
No
Defined solution?
No
Working group analyses issue
Consultation
Defined solution
Yes
No
Yes
Secretariat produces report
Panel/ secretariat automatically sends out report to parties
Parties cast votes against Applicable DCUSA objectives
Secretariat includes comments expressed during consultation and sends report (including recommendation to approve or reject) to Ofgem for decision
Is amendment approved?
No
END
Yes
Implementation
END