



STANDARD DISTRIBUTOR TERMS OF CONNECTION

Roger Barnard

BACK TO BASICS

- DNOs must be able to enter into contracts with end users of established connections
- The purpose of this is to limit DNOs' liability for loss and damage in tort or under statute
- DNOs would otherwise be exposed to unlimited liability resulting from the duties that they owe in respect of established connections
- Current methods are a patchwork quilt of direct procurement and third-party-rights approach
- Industry consensus for a signpost solution

SIGNPOST SOLUTION

- The following key elements will be required:
 1. Supplier to act as DNO's agent for the purpose of procuring a contract with customer
 2. Contract to be on DNO's standard terms and conditions of connection
 3. Standard terms and conditions to be common across all DNO service areas
[1 to 3 consistent with 1998]
 4. But terms (etc) to be incorporated by reference only in the customer supply contract
[a departure from 1998]

DRAFTED EXAMPLE

- Emboldened box in supply contract:
 - **This contract is subject to the National Conditions of Connection (NCC) which govern the connection at which your local network operator delivers the electricity supply to your premises. Copies of the NCC are available from the Energy Networks Association at 18 Stanhope Place, Marble Arch, London W2 2HH or on www.energynetworks.org**

CONTRACTUAL NEXUS

- Signpost solution does not automatically provide the terms and conditions to the customer
- But, in accordance with the law on incorporation of terms by notice, the terms and conditions have been drawn to the customer's attention and are directly accessible (or available on request)
- Hence, by entering into the supply contract, the customer becomes bound by the standard terms and conditions of connection
- Distributor-customer nexus is thus established

LEGAL ROBUSTNESS

- Signpost solution is contractually sound – but is it legally robust in all other respects?
- Yes – provided the terms and conditions comply with UCTA 1977 and UTCCR 1994
- UCTA requires contract terms which limit liability to be reasonable in all the circumstances
- UTCCR imposes a fairness test on terms that are not individually negotiated (ie, standard terms) and also requires any such terms to be expressed in plain and intelligible language

STATUTORY EXEMPTIONS

- However, the following exemptions are critical:
 1. UCTA states that contractual terms will be automatically regarded as reasonable if they have been approved by or are required under a decision of a competent authority (such as GEMA, ie Ofgem)
 2. UTCCR does not apply to any contractual term which is incorporated in order to comply with or reflect a UK regulatory provision or requirement (such as a licence condition)

REGULATORY SUPPORT

- A robust framework for the signpost solution will therefore need to reflect regulatory support
- For certainty, the new SLC should provide:
 - for DCUSA to make provision for establishing standard connection terms, particularly as regards limitation of DNOs' liability
 - for suppliers to act under DCUSA as agents for the DNOs with a specified text to procure the distributor-customer contract
 - for the standard terms and all changes to them to require Ofgem's approval