

Proposed variation:	Distribution Connection and Use of System Agreement (DCUSA) DCP012: "Introduction of contractual arrangements for the provision of use of system between one distributor and another distributor"		
Decision:	The Authority¹ directs that the proposed variation be made² and the alternative variation is not made		
Target audience:	Parties to the DCUSA and other interested parties		
Date of publication:	20 March 2008	Implementation Date:	1 April 2008

Background

When it was originally designated on 5 October 2006, the Distribution Connection and Use of System Agreement (DCUSA) was drafted to cover the commercial arrangements for use of system (UoS) between a distributor and supplier, CVA traded generator or customer. At the same time it was agreed that common arrangements for governing the relationship between distributors (currently captured in bilateral Connection and Use of System Agreements (CUoSAs)) would be developed at a later date. In this respect Schedule 12 of the DCUSA included instructions to develop such arrangements and a blank Section 2B was included in the DCUSA with a view to being populated with those arrangements.

In January 2007, the DCUSA Panel (the Panel) established a Working Group (the Group) to develop the drafting for Section 2B before a formal change proposal was raised. Members of the Group represented DNOs, IDNOs and suppliers.

Initial drafting was completed and presented to the Panel in November 2007. The Electricity Network Company Ltd (ENC) formally raised a change proposal on this issue (DCP012) which was considered by the Panel at the same time. Industry consultations on the drafting have been carried out both in August 2007 on the initial drafting and again in December 2007 as part of the formal change proposal. Wragge & Co have provided legal support throughout the drafting process.

DCP012 – the proposed and alternative variation

DCP012 seeks to introduce standard arrangements between distributors for governing connection and UoS. These arrangements will apply where one distributor (a downstream distributor who is referred to as a User) connects its network to and uses another distributor's network (an upstream distributor who is referred to as a Company).

These standard arrangements will replace existing bilateral CUoSAs (which are separately agreed for every connection between distributors) and it is intended that they will introduce an improved level of transparency, governance and efficiency to the benefit of the industry.

Inter alia, DCP012 will introduce core arrangements in relation to:

- i. The User's right to be connected and energised (Clause 39);
- ii. Use of distribution system (Clause 40);
- iii. Energisation, de-energisation and re-energisation (Clause 41);
- iv. Provision of data and metering equipment (Clause 42);
- v. Charges (Clause 43);
- vi. Guaranteed performance standards (Clause 49);
- vii. Network modifications (Clause 52); and

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

viii. a Bilateral Connection Agreement (BCA)³ template.

The proposer also considered that the introduction of Section 2B would provide a platform for future arrangements to be developed between distributors and offshore transmission operators.

The proposed and alternative variations

The only difference between the proposed and alternative variations is in relation to who would be liable for the costs of making consequential network modifications. That is, where a modification to a Company's network is proposed, which as a consequence requires the User's network to be modified. These liabilities are described in Clause 52.9 of both the proposed and alternative variation.

The proposed variation intends to place the liability for the cost of consequential modifications on the Company where their original modification alters the technical characteristics of the connection point (as set out in the relevant BCA). However, the Company would be excluded from this liability if their modification is the consequence of any Relevant Instrument, legislative requirement or Directive.

The alternative variation intends to limit the liability of the Company to circumstances where the costs of consequential modifications are recoverable from a third party.

Recommendation to Ofgem

Whilst not a part of the formal voting process, Parties to the DCUSA were asked whether they accepted the principle of the introduction of Section 2B. Respondents were unanimous in their support for the introduction of Section 2B. In particular they highlighted the benefits of standardising and making more transparent the arrangements that govern connection and UoS between distributors.

Although Parties to the DCUSA are wholly supportive of the introduction of Section 2B, as a consequence of the formal vote, neither the proposed nor alternative variation was recommended for implementation. See below for further details.

Proposed variation

In accordance with Clause 13.5, the DCUSA Parties' recommendation is for the proposed variation not to be implemented. This is because the sum of weighted votes in favour of implementing the proposed variation was not greater than 50% in all party categories. Of the party categories which were eligible to vote, 25% DNOs, 100% of IDNOs and 67% of suppliers voted in favour of implementing the proposed variation.

Alternative variation

In accordance with Clause 13.5, the DCUSA Parties' recommendation is for the alternative variation not to be implemented. This is because the sum of weighted votes in favour of implementing the alternative variation was not greater than 50% in all party categories. Of the party categories which were eligible to vote, 75% DNOs, 0% of IDNOs and 33% of suppliers voted in favour of implementing the proposed variation.

Implementation Date

DCUSA parties were asked to consider an implementation date of the later of either 1 April or 10 working days following a decision by the Authority.

³ The intention of the BCA is to take account of the specific, individual technical characteristics of connection points between networks.

All DCUSA Parties voted in favour of recommending that the proposed implementation date be accepted.

The Authority's decision

In reaching its decision the Authority has considered the issues raised by DCP012, the final Change Report (CR) dated 24 January 2008, the recommendations made by Parties to the DCUSA following its vote and responses to consultations in August and December 2007.

The Authority has concluded that:

1. implementation of the proposed variation will better facilitate the achievement of the Applicable DCUSA Objectives⁴;
2. implementation of the alternative variation will not better facilitate the achievement of the Applicable DCUSA Objectives; and
3. directing that the proposed variation be made and the alternative variation not be made is consistent with the Authority's principal objective and statutory duties⁵.

Reasons for the Authority's decision

We consider that DCP012 will better facilitate the achievement of the DCUSA's Applicable Objectives and is consistent with our wider responsibilities, particularly toward Better Regulation⁶. Specifically the Authority considers that DCP012 will better facilitate Applicable DCUSA Objectives i) and ii).

The development and introduction of standard arrangements for governing connection and UoS between distributors is a significant and positive step by the industry. Specifically it introduces arrangements which were recognised as being a necessary part of the DCUSA at its designation. More generally however, it represents a positive step by the industry to more effectively and openly self-regulate in accordance with the principles of Better Regulation.

We note that the development of Section 2B has been the result of concerted effort, in particular, by DNOs and IDNOs to review, consolidate and standardise existing connection and UoS arrangements (ie those terms typically found in CUoSAs). However, we also note that this process did not involve a more detailed review of parties' rights and obligations but recognised that once implemented, parties to the DCUSA can raise more substantive changes to Section 2B in accordance with Section 1c.

Below is a more detailed summary of why we consider that DCP012 will better facilitate Applicable DCUSA Objectives i) and ii) and why we have chosen to direct the implementation of the proposed variation as opposed to the alternative variation.

Objective i) - the development, maintenance and operation by the DNO Parties and IDNO Parties of efficient, co-ordinated and economical Distribution Networks.

⁴ As set out in the Distribution Licence Standard Condition 9B(9), see:

<http://epr.ofgem.gov.uk/index.php?pk=folder100985>

⁵The Authority's statutory duties are largely provided for in legislation, principally the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising under European Community legislation. The Authority's duties are wider than the matters which the Panel must take into consideration.

⁶ The Principles of Better Regulation are proportionality, accountability, consistency, transparency and targeting. They can be found in "Better regulation - from design to delivery: Annual Report 2005", see: (<http://www.brc.gov.uk/upload/assets/www.brc.gov.uk/designdelivery.pdf>)

It is important to develop, maintain and operate efficient, co-ordinated and economical networks so as to avoid passing on unnecessary costs to other market participants and ultimately end consumers.

In our view, DCP012 will facilitate the achievement of objective i) by introducing standard arrangements into the DCUSA that govern the relationships between all licensed distributors. In particular multiple bilateral arrangements with no specific governance will be replaced by standard arrangements which will be more transparent and consistent. By improving the level of transparency and consistency, distributors will be better placed to make effective decisions and more likely to develop, maintain and operate efficient, co-ordinated and economical networks.

DCP012 will also ensure that core industry arrangements become subject to robust, transparent and accountable governance and change control arrangements.

Objective ii) – the facilitation of effective competition in the generation and supply of electricity and (so far as is consistent therewith) the promotion of such competition in the sale, distribution and purchase of electricity.

Facilitating competition is desirable because it can have the effect of reducing costs and improving the quality of service received by consumers. Protecting the interests of consumers present and future, wherever appropriate by promoting effective competition is also Ofgem's principal objective.

Generally we consider that DCP012 will introduce more transparent and consistent arrangements, which will reduce barriers to entry, for example into the electricity distribution market, and improve regulatory certainty – conditions, which in our view, are necessary for effective competition.

However we note that the introduction of Section 2B is unlikely to have a direct, immediate effect on competition in the generation and supply of electricity. We consider that it will facilitate competition in these areas but only as a consequence of improvements in the interface between distributors. For example, as a consequence of more efficient, co-ordinated and economical networks, the supply and generation markets could benefit through lower distribution costs and improved, more consistent delivery of distribution services.

Specific views in relation to the proposed and alternative variation

All electricity distributors have a duty under Section 9 (1) of the Electricity Act 1989 (the Act) to develop and maintain an efficient, co-ordinated and economical system of electricity distribution. This means that all distributors need to jointly consider how to run their businesses to comply with this requirement, independent of who bears the cost.

There is only one difference between the proposed and alternative variation, which is in relation to the liabilities for consequential network modifications. The difference between the two variations is described above.

For the reasons set out below we have decided to approve the implementation of the proposed variation but not the alternative.

We consider that the proposed variation will better facilitate Applicable DCUSA Objective i), whereas the alternative variation will not. This is because we consider the proposed variation will incentivise parties, particularly by placing responsibility with the distributor who initiates the need for modification, to develop, maintain and operate more efficient, co-ordinated and economical networks.

In addition, we consider that distributors have an obligation to maintain connections to their networks (see Section 16(1) and (4) of the Act) and that this requirement means the upstream distributor should not modify its network if it will cause a breach of any of the connection agreements between itself and any connected downstream distributor. However, if as a consequence of a planned modification to its network, the upstream distributor chooses to vary the terms of any connection agreement between itself and a downstream distributor, it should be liable for the costs of any modification that the affected downstream distributor must make as a consequence. In our view this delivers the most appropriate outcome for customers as the Users' customers should not be exposed to charges for additional costs that are not a consequence of their actions.

Other issues

Drafting concerns

DCP012 has consolidated a considerable set of arrangements that are already in common use by distributors. Whilst the majority of provisions proposed by DCP012 are clear and user friendly, we consider that in relation to clause 41.3 the drafting could be clearer.

Clause 41.3 sets out who is liable for remedial works following the de-energisation of a connection point. In particular, the second and third sentences of this clause describe whether the User or the Company should pay for remedial works caused by de-energising a connection point in accordance with either clauses 41.1.3 or 41.1.4. We consider that the drafting of proposed clause 41.3 may need to be improved so that when it is a connected customer who triggers the need for de-energisation and therefore remedial works, it is clear whether it is the Company/User who is responsible for the actions of its connected customer.

Transition

All new connections between distributors from 1 April 2008 will have to comply with the DCP012. However, we note that no transitional arrangements were developed as part of DCP012 and as a consequence Section 2B will have effect at the same time as existing CUoSAs.

In order to derive the benefits of Section 2B and to avoid any inconsistencies between Section 2B and existing CUoSAs, which may create a regulatory risk, Parties to the DCUSA should migrate from CUoSAs to BCAs as soon as possible.

Decision notice

In accordance with Standard Condition 9B of the Distribution Licence, the Authority hereby directs that the proposed variation set out in the proposed variation of DCP012: "Introduction of contractual arrangements for the provision of use of system between one distributor and another distributor" be made, and that it shall be implemented on 1 April 2008.

Rachel Fletcher

Director, Electricity Distribution

Signed on behalf of the Authority and authorised for that purpose.