

Modification proposal:	Distribution Code: Changes to the Distribution Code for the incorporation of Independent Distribution Network Operators		
Decision:	The Authority directs that this proposal be made ¹		
Target audience:	Parties to the Distribution Code and other interested parties		
Date of publication:	5 December 2008	Implementation Date:	15 December

Background to the modification proposal

Electricity Distribution Licence holders² are obliged under Standard Licence Condition 21 to take all steps within their power to ensure that the Distribution Code in force under the licence at 31 May 2008 remains a code approved by the Authority³ that complies with the requirements set out in the licence.

Following a period of consultation, the Chair of the Distribution Code Review Panel ("DCRP") wrote to us on 31 October 2008, on behalf of the ex-PES⁴ distribution licensees ("DNOs"), seeking approval to make changes to the Distribution Code and its Constitution to incorporate the Independent Distribution Network Operators ("IDNO") into the governance processes of the Distribution Code. Approval was also sought for the Distribution Code to reference the constitution of the Industry Technical Codes Group ("ITCG") which plays a key role in the overall governance scheme for the Distribution Code.

The Utilities Act 2000 amongst other things amended the Electricity Act 1989 by introducing a new type of electricity distribution licensee, now commonly referred to as an IDNO. Since this amendment, a small but growing number of IDNOs have been established.

In June this year, after a period of consultation with stakeholders, the revised Electricity Distribution Licence came into force. This revised licence introduced a small but important change in relation to the obligation to have in force, implement and comply with a Distribution Code. The previous licence allowed any distribution licence holder to create its own Distribution Code, subject to the approval of the Authority. Although the DNOs have co-operated to produce a single Distribution Code there was a risk that the IDNOs might decide to produce their own, either individually or as a group. There was very wide agreement across the industry that it would be unhelpful if this was to happen and so all affected parties have worked together to ensure that, as the number of distribution licence holders grow, they all adopt a single Distribution Code.

This objective has been met by the revision to the Electricity Distribution Licence and this Distribution Code modification. Firstly, the revised Electricity Distribution Licence refers to "...the Distribution Code in force...at 31 May 2008..." as being the single Distribution Code for Great Britain that a licensee must have in force, implement and comply with. Secondly, recognising the implications of this change, the DCRP, through the Energy

¹This decision document includes the reasons for this decision as required by section 49A of the Electricity Act 1989.

² This includes the fourteen ex-PES licensees referred to as DNOs and all other licence holders referred to as IDNOs.

³ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. The Authority is the Gas and Electricity Markets Authority; the regulator of the gas and electricity industries in GB. Ofgem is the Office of the Gas and Electricity Markets which supports the Authority.

⁴ The Public Electricity Supply licensees established at vesting

Networks Association (ENA), has brought the DNOs and the IDNOs together to find a way of including the IDNOs in the governance processes relating to the Distribution Code.

This Distribution Code modification proposal is the culmination of this work and relates to the changes to the Distribution Code, its Constitution and the Constitution of the ITCG required to incorporate IDNOs into the governance processes.

The modification proposal

The DCRP first consulted on this issue in October 2007. As a result of this consultation, a Working Group was established, reporting to the DCRP. This Working Group consisted of three DNO representatives, two IDNO representatives together with single representatives from the DCRP, the ENA and Ofgem. The Working Group was asked to develop the ideas set out in the consultation, together with all the comments received, to produce agreed proposals for submission to the DCRP.

On completion of this work, in August 2008, the DCRP published its second consultation on this issue. This set out a governance model for the Distribution Code incorporating the IDNOs. It addressed IDNO representation on the DCRP and proposed the necessary changes to the constitution of the DCRP. It also addressed the constitution of the ITCG which plays a vital supporting role to the DCRP⁵ and proposed that the ITCG should be formally referred to in the Distribution Code. The primary elements of the modification proposal can be summarised as follows:

- a) Modify the Distribution Code to include IDNOs and the ITCG and ensure that at least one IDNO representative is a member of the DCRP;
- b) Modify the Distribution Code Constitution to incorporate IDNO representation so that IDNOs are able to fully participate in the governance of the Distribution Code and to amend the Definition of "Distribution Code", deleting the reference to SLC9 and replacing it with SLC 21 to reflect the recent amendment⁶ to the Distribution Licence; and
- c) Formally recognise the Constitution of the ITCG including the arrangements for funding the activities of the DCRP.

In addition to the modifications described above, the DCRP has taken this opportunity to update the Distribution Code so that it deletes the reference to the Gas and Electricity Consumer Council (GECC) and instead refers to the National Consumer Council (NCC), to reflect the changes to consumer representation introduced by the Consumers, Estate Agents and Redress Act 2007 (CEAR Act 2007).

DCRP Panel recommendation

The DCRP considered this modification proposal at its meeting on 2 October 2008 and offered unanimous support for it. Subsequently, the report to the Authority from the Chair of the DCRP recommends approval.

The changes proposed by the DNOs are set out in the Report to the Authority by the Chair of the DCRP as required by SLC 21.9 of the Electricity Distribution Licence.

⁵ The objectives of the ITCG are set out in its constitution and include nominating the Chairman, DNO and IDNO DCRP representatives.

⁶ Standard conditions of the Electricity Distribution Licence consolidated 1 June 2008

The report to the Authority highlights the fact that three material comments were made suggesting changes to the proposals as a result of the final DCRP consultation. These comments related to:

- a) The payment of expenses – A suggestion by one licensee that smaller companies (<80,000 MPANs) who pay the minimum contribution to meet the costs of supporting the work of the DCRP should be allowed to reclaim expenses incurred in relation to the governance of the Distribution Code rather than only larger companies (>80,000 MPANs);
- b) The structure of licensees' contributions – A proposal to change the structure of the licensees' contributions that the upper two bands of contribution be combined and instead of the upper band paying on a per licence basis it should be on a per MPAN basis;
- c) Scottish representation - The suggestion made by one licensee that there should continue to be specific Scottish DNO representation on the DCRP.

The DCRP considered these comments but decided that they should be rejected. The DCRP's reasons for this can be summarised as follows:

- a) The payment of expenses - This proposal could result in small IDNOs recovering expenses that exceed their funding contributions. As the cost of their participation would be met by the other DNOs and IDNOs the DCRP rejected this proposal;
- b) The structure of licensees' contributions - This proposal was considered to be at odds with the approach already consulted upon. The suggestion was one of the suggestions made in the original consultation that was considered and rejected. This suggestion at this stage was therefore rejected by the DCRP;
- c) Scottish representation - The DCRP noted in rejecting the request to retain specific Scottish representation that distribution licences are for the whole of GB and expressed discomfort about maintaining regional distinctions. The proposal to maintain specific Scottish representation was therefore rejected.

The Authority's decision

SLC 21.10 of the Electricity Distribution Licence requires that revisions to the Distribution Code that are proposed by the licensee and sent to the Authority cannot be implemented without the Authority's approval.

The Authority has considered the issues raised by the proposed revision to the Distribution Code, the Report on the outcome of the review dated 31 October 2008 and the written representations received during the consultation process to the Authority setting out the results of the consultation as described above. The Authority has concluded that:

1. implementation of the modification proposal will better facilitate compliance with the obligations set out in SLC 21 of the Electricity Distribution Licence; and

2. the modification made is consistent with the Authority's principal objective and statutory duties⁷.

Reasons for the Authority's decision

We agree with the DCRP that there are significant benefits in establishing a single Distribution Code for all GB distribution licensees. This principle was applied when the Distribution Code was first established by the ex-PES DNOs in England and Wales and, more recently, when the Distribution Code for Scotland was merged with the Distribution Code for England and Wales. We therefore see this proposal to incorporate the IDNOs as a welcome and logical development. In particular, we consider that by giving all licensees access to the governance of the Distribution Code it will better facilitate, amongst other things, the development, maintenance and operation of an efficient, co-ordinated and economical system for the distribution of electricity; SLC 21.4(a) of the Distribution Code. Further, we consider that by approving this modification we are meeting our principal objective and statutory duties. This is because the Distribution Code is a key document which impacts, amongst other things, the planning, operation and safety of the distribution networks and we therefore consider it vital that all licensees play a part in its governance.

We have had regard to the representations and comments received as a result of the final DCRP consultation (as described above) but accept that the DCRP has given them due consideration before rejecting them and has provided reasons for doing so, which we support. We also note the 'housekeeping' change made as a result of the CEAR Act 2007 deleting the reference to the GECC and replacing it with the NCC and the housekeeping changes to the Distribution Code Constitution.

Ofgem considers that, having regard to the DNOs' obligations set out in SLC 21 of the Electricity Distribution Licence ("the obligations") and the Authority's wider statutory duties, the proposed changes to the Distribution Code and its Constitution together with the ITCG's Constitution should be approved by the Authority.

Decision notice

In accordance with SLC 21.10 of the Electricity Distribution Licence, the Authority, hereby directs that modification proposal: Changes to the Distribution Code for the incorporation of the Independent Distribution Network Operators be made.



Rachel Fletcher

Director of Distribution

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

⁷The Authority's statutory duties are wider than matters which the Panel must take into consideration and are largely provided for in statute, principally the Electricity Act 1989, the Gas Act 1986, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from directly effective European Community legislation.