

Proposed variation:	Distribution Connection and Use of System Agreement (DCUSA) DCP039: Change to notice period provisions for changes to charges to IDNOs		
Decision:	The Authority ¹ directs that this variation be made		
Target audience:	Parties to the DCUSA and other interested parties		
Date of publication:	11 March 2009	Implementation Date:	16 March 2009

Background to the proposed variation

The Distribution Networks Operators (DNOs) and Independent Distribution Networks Operators (IDNOs) are currently working to develop revised Distribution Use of System (DUoS) charges to reflect the specific costs IDNOs impose on the distribution system. However, it appears unlikely that this work will be implemented before 1 April 2009.

Clause 43.1 of the DCUSA currently requires distribution parties to use reasonable endeavours to vary DUoS charges no more than two times per year and with effect only from 1st April or 1st October.

The proposed variation

The proposal seeks to revise Clause 43.1 of the DCUSA in order to clarify that alternative implementation dates for changes to charges can be agreed between the Company and the User, in this context the DNOs and the IDNOs. The proposer notes that no changes have been proposed to Clause 19 of the agreement, so this proposal does not impact upon the notice periods that DNOs and IDNOs have to give Suppliers before implementing revised charges.

Recommendation

The DCUSA Parties recommended to the Authority that DCP039 be implemented, having unanimously voted in favour. The Panel also recommended that an implementation as part of the February 2009 scheduled DCUSA release would be beneficial, but noted that this was dependent upon the timescales of the Authority's decision.

The Authority's decision

The Authority has considered the issues raised by DCP039 and the final Change Declaration dated 17 February 2009. The Authority has considered and taken into account the responses to ElectraLink's² consultation which are attached to the Change Declaration³ and the recommendation of the DCUSA Parties. The Authority has concluded that:

1. implementation of the proposed variation will better facilitate the achievement of the Applicable DCUSA Objectives⁴; 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 The role, functions, and responsibilities of Electralink are set out in Section 1B of the DCUSA.

³ DCUSA change proposals, modification reports and representations can be viewed on the DCUSA website at <http://dcusa.co.uk/Public/Default.aspx>

⁴ As set out in the Distribution Licence Standard Condition 9B(9), see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=12773

2. directing that the proposed variation be made is consistent with the Authority's principal objective and statutory duties⁵.

Reasons for the Authority's decision

We note that this proposal received unanimous support from respondents, though there were few substantive comments provided. We consider that under normal circumstances the terms and conditions of a contract can appropriately be varied where there is mutual consent. Whilst there may be differing interpretations as to whether a variation from Clause 43.1 could appropriately be agreed in such a way, the implementation of this proposal will remove any ambiguity and provide legitimacy to the DNO and IDNOs actions should they wish to adopt revised charging arrangements on any day other than 1st April or 1st October. However, we do not anticipate that this would be a frequent occurrence and note that the parties will remain bound to use reasonable endeavours to vary those charges no more than twice a year.

We also note that this proposal deliberately excludes changes to Clause 19.1 of the DCUSA relating to supplier charges. One respondent suggested that whilst it is appropriate that this change be progressed in isolation, there should be consistency between the two and that future consideration should also be given to DCUSA Clause 19.1. For the avoidance of doubt, our views on this proposal should not be read as support or otherwise for a similar proposal to change Clause 19.1, which will apply to a differing set of circumstances and be judged on its own merits. We also note that Clause 19.1 has previously been the subject of a change proposal DCP001⁶, which we accepted 22nd June 2007.

We agree with the proposer that to the extent this proposal will allow for the timely introduction of new charges, it can be expected to better facilitate applicable objective c) of the distribution licence; *'the efficient discharge by the licensee of the obligations imposed upon it'*.

We also consider that as this proposal will clarify a potentially ambiguous area of DCUSA drafting, it will have a marginal benefit on applicable objective d) *'the promotion of efficiency in the implementation and administration of the DCUSA arrangements'*.

Decision notice

In accordance with Standard Condition 22 of the Distribution Licence, the Authority hereby directs that the proposed variation set out in DCP039: *'Change to notice period provisions for changes to charges to IDNOs Address Change'* be made.



Rachel Fletcher
Director, Distribution

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

⁵The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989.

⁶ <http://www.ofgem.gov.uk/Licensing/ElecCodes/DCUSA/Changes/Documents1/DCP001D.pdf>