

Proposed variation:	<b>Distribution Connection and Use of System Agreement (DCUSA) DCP079 - Statutory application of National Terms of Connection (NTC)</b>		
Decision:	The Authority <sup>1</sup> directs that proposal DCP079 be made <sup>2</sup>		
Target audience:	DCUSA Panel, parties to the DCUSA and other interested parties		
Date of publication:	24 October 2011	Implementation Date:	3 November 2011

## Background to the modification proposal

The change proposal seeks to clarify that the National Terms of Connection (NTC) should be treated as terms as provided for under section 21 of the Act, therefore giving the NTC automatic effect in the absence of a bi-lateral agreement.

Under section 16 of the Electricity Act 1989 ("the Act"), an electricity distributor ("the Distributor") must offer to connect premises to its network if requested to do so by the owner or occupier of the premises or an authorised supplier acting with the consent of the owner or occupier ("the requesting party"). If such an offer is accepted, an agreement is entered into between the Distributor and the requesting party. Distributors require the users of already constructed, or newly constructed, connections to enter into connection agreements to govern the use of the connection. These agreements provide for any physical works necessary to give effect to the connection. Such agreements involve the Customer and the electricity distributor as the parties to the connection agreement<sup>3</sup>.

The parties can enter into an agreement either by way of a negotiated bi-lateral agreement governed by the distributor's own policies or through an agency relationship with the Customer's supplier. Bi-lateral agreements are common for large generators or where the nature of the connection is complex or unusual.

Under the terms of the DCUSA<sup>4</sup>, Suppliers entering into contracts with Customers (whether for the supply or purchase of electricity) are appointed to act as agent for the relevant Distributor, and to agree with the Customer that the National Terms of Connection apply in respect of the Customer's connection (unless a bi-lateral agreement applies<sup>5</sup>).

The NTC are terms and conditions which are intended by default to govern the use of connections to distribution systems by Customers, where a bi-lateral agreement between the Customer and the Distributor does not exist.

In November 2010 a new version of the NTC was published in response to the approval by the Authority of DCUSA Change Proposal DCP 033<sup>6</sup>. This added new sections<sup>7</sup> into the NTC providing for additional terms to apply to different types of customer.

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

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

<sup>3</sup> Understood as the person to whom the agreement applies and the installer and maintainer of the connection respectively.

<sup>4</sup> Schedule 2B of the DCUSA, Section 1B details the agency relationship where, when entering into a contract for supply or export of electricity by the electricity supplier, the customer is also entering into the NTC with the network operator, as the supplier is the agent of the network operator in ensuring this agreement is made. <http://www.dcusa.co.uk/Public/DCUSADocuments.aspx?s=c>

<sup>5</sup> Schedule 2B, Section 1F of the DCUSA details the force of existing terms over the NTC and Section 1E refers to instances where the NTC may be terminated where the customer chooses to enter into a replacement agreement the network operator. <http://www.dcusa.co.uk/Public/DCUSADocuments.aspx?s=c>

<sup>6</sup> Details of DCP033 'Connection Terms' can be found on the DCUSA website: <http://www.dcusa.co.uk/Public/Default.aspx?ReturnUrl=%2fDefault.aspx>

During the assessment of DCP 033, a proposal for the NTC to be deemed to be terms as provided for in section 21 of the Act<sup>8</sup> was raised by UK Power Networks (UKPN), (then EDF Energy Networks). This proposal was considered to be outside the scope of DCP 033 which focused on an amendment to the content of the NTC under Schedule 2B of the DCUSA with regard to additional terms for different types of customer as well as consideration of external bi-lateral agreements made outside the NTC. UKPN agreed to raise a separate modification proposal to address the issue it had highlighted. DCP079 was therefore raised to clarify that the NTC be applied automatically by default, ie as terms as provided for under section 21 of the Act.

### **The modification proposal**

DCP079 was raised by UKPN in January 2011 subsequent to the approval of DCP 033. The change proposal seeks to clarify the DCUSA to reflect that the NTC should be treated as terms as provided for under section 21 of the Act, therefore giving the NTC automatic effect in the absence of a bi-lateral agreement.

The NTC sets out terms and conditions that the network operator requires the customer to enter into, in return for maintaining the connection of the premises to the network. The NTC is currently the fallback position open to customers who do not enter into a bi-lateral agreement with the network operator. Under section 21 of the Act, the network operator has the ability to require the person requiring a connection to accept, in making the connection, certain terms that are reasonable in all circumstances. The modification proposal is that the NTC should constitute the terms that are required to be accepted in making the connection.

The effect of this proposal is that the NTC will apply by default, therefore requiring customers to accept these terms when requesting a connection in the absence of a bi-lateral agreement already in place. In the absence of an existing bi-lateral agreement, this will have the effect of providing customers with certain automatic rights. These include the right for a customer to stay connected, the right to issue the network operator with a disconnection notice and the assurance that the connection will be maintained by the network operator. The previous modification DCP 033 bi-lateral afforded separate connection terms for large metered and unmetered customers as well as allowing that bi-lateral agreements could be used as an alternative to the NTC. The change proposed under DCP 079 does not seek to change this mechanism of the NTC or to re-evaluate the use of bi-lateral agreements. The proposal seeks to insert additional wording into the DCUSA, to clarify that the NTC provides certain terms and conditions which an electricity distributor requires to be accepted by Customers in order to maintain a connection, and that it applies to customers in the absence of any existing bi-lateral agreement being in place. Therefore, the customer is automatically protected by the NTC as they are deemed to be the terms as provided for under section 21 of the Act.

The proposal does not seek to make any amendments to the existing provisions of the NTC. The change simply confirms that unless further bi-lateral agreements are in place, any terms and conditions that the distributor may insist on by virtue of section 21 of the Electricity Act 1989 will be limited to those set out in the NTC.

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<sup>7</sup> Sections 3 & 4 were included to introduce additional connection terms for large metered and unmetered customers. Some changes were also made to section 2 to make it apply for domestic and other small customers only. <http://www.dcusa.co.uk/Public/DCUSADocuments.aspx?s=c>

<sup>8</sup> Under section 21 of the Electricity Act 1989 (the Act), an electricity distributor "may require any person who requires a connection in pursuance of section 16(1) ... to accept in respect of the making of the connection ... any terms which it is reasonable in all the circumstances for that person to be required to accept...".

## DCUSA Parties' recommendation

The Change Declaration for this change proposal indicates that DNO, IDNO/OTSO, DG and Supplier parties were eligible to vote on DCP079.

In each party category where votes were cast (no votes were cast in the DG party category) there was unanimous support for the proposal and its proposed implementation date. In accordance with the weighted vote procedure, the recommendation to the Authority is that DCP079 is accepted. The outcome of the weighted vote is set out in the table below:

DCP079	WEIGHTED VOTING (%)							
	DNO		IDNO/OTSO		Supplier		DG	
	Accept	Reject	Accept	Reject	Accept	Reject	Accept	Reject
CHANGE SOLUTION	100	0	100	0	100	0	n/a	n/a
IMPLEMENTATION DATE	100	0	100	0	100	0	n/a	n/a

## The Authority's decision

We have considered the issues raised by the proposal and the Change Declaration dated 19 September 2011. The Authority has considered and taken into account the vote of the DCUSA Parties on the proposal which is attached to the Change Declaration. The Authority has concluded that:

1. implementation of the change proposal DCP079 will better facilitate the achievement of the General DCUSA objectives; and
2. directing that the change is approved is consistent with the Authority's principal objective and statutory duties.<sup>9</sup>

## Reasons for the Authority's decision

We note that this change proposal received unanimous support from voting parties. However, there were some specific issues raised by stakeholders relating to the effect DCP079 may have on existing contracts, new connections and un-metered connections. We are satisfied that these concerns were clearly addressed and clarified by the WG in their responses to the stakeholders' submissions. The change proposal makes clear that it does not affect existing contracts and that unmetered and new connections are impacted equally in having available, default, and automatic protection under the NTC for all customers.

The Authority has taken into account that the DCUSA Panel considered that the proposal better facilitates General DCUSA objectives 3.1.1 and 3.1.4.

We consider that the proposal clarifies the application of the NTC and provides additional protections to customers where they do not already have a bi-lateral agreement in place.

### ***General DCUSA Objective 3.1.1 'the development, maintenance and operation by each of the DNO Parties and IDNO Parties of an efficient, co-ordinated, and economical Distribution System'***

We agree with the Working Group and the DCUSA parties that the proposal better facilitates this objective. We consider that the proposed change endeavours to facilitate

<sup>9</sup> The Authority's statutory duties are wider than matters that the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

maintenance and operation of an efficient and co-ordinated distribution system by providing greater clarity on the operation of the existing arrangements and ensuring that there is a default position to protect customers.

***General DCUSA Objective 3.1.4 'the promotion of efficiency in the implementation and administration of the DCUSA and the arrangements under it'***

We consider that the proposal better facilitates this objective and will promote greater clarity and efficiency by assisting Customer understanding of the NTC. The application of the NTC as terms as provided for under section 21 of the Act will also promote efficiency in the DCUSA arrangements.

More broadly, since Customers will be afforded the protection of the NTC in the absence of a bi-lateral agreement, we consider approval of the proposal is consistent with our principal objective and wider statutory duties. The application of the NTC as terms as provided for under section 21 of the Act is also in line with our duty in respect of best regulatory practice by promoting transparency and certainty in the arrangements.

**Decision notice**

In accordance with standard condition 22.14 of the Electricity Distribution Licence, the Authority hereby directs that modification proposal DCP079: "*Statutory Application of National Terms of Connection*", be made.

**Andrew Burgess**

**Associate Partner, Transmission and Distribution Policy**

Signed on behalf of the Authority and authorised for that purpose