

Proposed modification:	Distribution Connection and Use of System Agreement (DCUSA) DCP170 – Code Governance Review Phase 2 Changes		
Decision:	The Authority ¹ directs that modification DCP170 be made ²		
Target audience:	DCUSA Panel, Parties to the DCUSA and other interested parties		
Date of publication:	19 December 2013	Implementation Date:	31 December 2013

Background to the modification proposal

Ofgem’s Code Governance Review³ (CGR) sought to update and improve the industry code governance arrangements to ensure that they could effectively meet the challenges facing the industry, and to reduce complexity to ensure transparency and accessibility for all industry participants.

The CGR concluded in March 2010 with final proposals focusing primarily on the Balancing and Settlement Code (BSC), the Connection and Use of System Code (CUSC) and the Uniform Network Code (UNC). In April 2012, we initiated a second phase CGR (CGR Phase 2) with the aim of extending governance arrangements introduced through the CGR to other industry codes, including the DCUSA.

Following a consultation on initial proposals in September 2012,⁴ we published final proposals for CGR Phase 2 in March 2013.⁵ Licence modifications giving effect to these final proposals came into force on 5 August 2013.

CGR Phase 2 introduced a number of changes to the governance arrangements of the DCUSA including:

- a Significant Code Review (SCR) process which provides a role for Ofgem to lead complex changes to the industry codes in a holistic manner⁶
- the extension of the existing self-governance process (called ‘Part 2 matters’ under DCUSA) whereby modification⁷ proposals that would be unlikely to have material impacts on, for example, consumers, competition or sustainable development, can be determined by the DCUSA parties without reference to the Authority for decision
- the requirement for an assessment of the extent to which proposed modifications would better facilitate achieving the applicable DCUSA Objectives, and a detailed explanation of the reasons for that assessment, to be contained within all modification reports. The CGR Phase 2 licence modifications also clarified that parties voting to accept or reject proposed modifications must do so with regard to whether or not the change better facilitates the applicable objectives

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.

³ CGR Phase 1 final proposals: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-final-proposals-4310>

⁴ CGR Phase 2 initial proposals: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-2-consultation>

⁵ CGR Phase 2 final proposals: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-2-final-proposals>

⁶ Ofgem guidance on SCRs: <https://www.ofgem.gov.uk/ofgem-publications/61740/guidanceinitiating-and-conducting-scrsfinal-draft110810.pdf>

⁷ The term modification used throughout this document has the same meaning as the word ‘change’ under the DCUSA

- a 'send back' process, allowing the Authority to send a final report on a modification proposal back to the DCUSA Panel where the Authority indicates that it cannot make a decision based on the original report submitted to it. A send back direction by the Authority would allow deficiencies (for example, relating to proposed legal text or incomplete analysis) in the original report to be addressed
- the concept of an administrative body (the 'Code Administrator') and the Code Administration Code of Practice (CACoP).⁸ The CACoP establishes certain principles that are considered to capture the key elements of best practice in the administration of code modification procedures. It also provides a template for the ongoing convergence and simplification of existing code rules.

The modification proposal

Eastern Power Networks ('the proposer') raised modification DCP170 in order to incorporate the CGR Phase 2 changes into the DCUSA in line with the Distribution Licence.

The proposed legal text:

- recognises Ofgem's role in initiating, leading and managing the SCR process
- removes the existing restrictions on certain parts of DCUSA necessarily requiring Authority consent to be changed, in order that any proposed modification that is non-material can be dealt with without reference to the Authority. At the same time, the change broadens the self-governance decision appeal criteria as an additional safeguard for parties
- requires detailed reasons of the assessment of change against the applicable DCUSA objectives to be reported in all cases
- enables a process for the Authority to return a final modification report to the DCUSA Panel to address identified deficiencies in that report, where the Authority cannot properly form an opinion on the proposed modification
- incorporates a role for a Code Administrator⁹ to have regard to and be consistent with the CACoP, and to act as 'critical friend' to parties upon reasonable request

The proposer considers that DCP170 will better facilitate applicable DCUSA Objective 3.1.3 by enabling Distributors to remain compliant with their licence obligations.

DCUSA Parties' recommendation

The Change Declaration for DCP170 indicates that DNO,¹⁰ IDNO/OTSO,¹¹ Supplier and DG¹² parties were eligible to vote on DCP170. 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 for its proposed implementation date. In accordance with the weighted vote procedure, the recommendation to the Authority is that DCP170 is accepted. The outcome of the weighted vote is set out in the table below:

⁸ The CACoP is for energy code administrators and users of those codes. It was developed by industry as part of the CGR: <https://www.ofgem.gov.uk/licences-codes-and-standards/codes/industry-codes-work/code-administration-code-practice-cacop>

⁹ This role is currently undertaken by Electralink

¹⁰ Distribution Network Operator

¹¹ Independent Distribution Network Operator/Offshore Transmission System Operator

¹² Distributed Generation

DCP170	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 27 November 2013. We have considered and taken into account the vote of the DCUSA Parties on the proposal which is attached to the Change Declaration. We have concluded that:

- implementation of the change proposal DCP170 will better facilitate the achievement of the General DCUSA objectives;¹³ and
- directing that the change is approved is consistent with the Authority's principal objective and statutory duties.¹⁴

Reasons for the Authority's decision

We agree that DCP170 better facilitates general DCUSA objective 3.1.3. We also consider that DCP170 better facilitates objectives 3.1.2 and 3.1.4. We consider that DCP170 is neutral to objectives 3.1.1 and 3.1.5.

DCUSA General Objective 3.1.2 – the facilitation of effective competition in the generation and supply of electricity and (so far as is consistent with that) the promotion of such competition in the sale, distribution and purchase of electricity

Creating a Code Administrator 'critical friend' role and introducing best practice principles for the modification processes, which are consistent with other industry codes, should assist all participants engaging with the DCUSA, especially smaller participants and new entrants. This can be expected to result in benefits to competition, for example, by facilitating a greater degree of participation and aiding understanding of the DCUSA processes.

DCUSA General Objective 3.1.3 – the efficient discharge by each of the DNO Parties and IDNO Parties of the obligations imposed upon them by their Distribution Licences

The recent licence modifications¹⁵ made to introduce the CGR2 governance changes into the DCUSA governance arrangements are now in force. The relevant licensees therefore must ensure that these licence provisions can be efficiently discharged. The changes proposed by DCP170 will ensure that these licensees can discharge their obligations relating to the CGR2 governance changes through the DCUSA governance procedures both efficiently and effectively. We therefore consider that this modification better facilitates this objective.

¹³ The DCUSA General Objectives (Applicable DCUSA Objectives) are set out in Standard Licence Condition 22.2 of the Electricity Distribution Licence and are also set out in Clause 3.1 of the DCUSA.

¹⁴ The Authority's statutory duties are wider than matters that the DCUSA Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

¹⁵ See <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-2-notice-licence-modifications>

DCUSA General Objective 3.1.4 – the promotion of efficiency in the implementation and administration of this Agreement and the arrangements under it

We consider that DCP170 will promote efficiency in the implementation and administration of the DCUSA by improving the existing governance processes. The inclusion of the SCR process will help ensure that complex code changes can occur in a timely and holistic manner. Further, enabling more 'housekeeping' type modifications to be decided by DCUSA parties, in line with the self-governance criteria, will ensure efficient progression of code modifications which have low materiality. We are satisfied that the self-governance modification decision appeal provisions, and the Authority's ability to 'call in' any modification proposal classified as self-governance up until the DCUSA Panel approve the final modification report for party voting, will ensure appropriate safeguards are in place.

DCUSA already operates a degree of self-governance and therefore this change does not represent a significant shift from current practice. DCP170 removes the list of provisions within the DCUSA which have previously required Authority consent in all cases. However, we anticipate the DCUSA Panel will retain this as guidance to aid their assessment of the appropriateness of self-governance for modification proposals going forward. In particular it is not clear to us that changes to the charging methodologies or to the National Terms of Connection would be eligible for self-governance owing to the nature of these provisions, although this may not be the case in all circumstances, for example changes of a housekeeping nature.

The introduction of DCP170 also enables a process for the Authority to send back a modification report where it cannot make a decision on the proposed modification due to some identified deficiency, eg defective legal text. This approach is more efficient when compared to the alternative of the Authority either rejecting an otherwise beneficial modification or accepting a flawed modification which requires later correction.

We also consider that adherence to the CACoP principles will lead to improved efficiency in DCUSA administration over the longer term. We therefore do not agree with the workgroup's assessment that DCP170 is neutral to this objective. However, we note that whilst the workgroup did not consider this objective was better facilitated, elsewhere in the final report it is indicated that the workgroup did consider DCP170 would provide enhancements and efficiencies to the change process provisions within the DCUSA.

Other comments

Although not part of the DCP170 legal drafting, we welcome the proposed updates to the 'Voting Form' which DCUSA parties complete in order to make their vote for or against a proposed change. This form now contains a list of the DCUSA objectives, and invites parties to add reasons for their assessment against these objectives. We consider, however, that to ensure the process required under the licence works effectively, parties should be presented with tick boxes against each objective in order that parties, in casting their vote, can indicate which objectives they consider the change has positive or negative impacts against.

We also welcome that a review is currently underway in respect of the DCUSA website and the way in which modification-related information is made available to interested parties. We consider that open access to key modification information – such as modification proposals, consultations and reports – should be openly available to all interested parties (including non-DCUSA parties) in order that they can engage with the change processes. This is relevant in terms of consistency with CACoP principle 3 – 'Information will be promptly and publicly available to users'.

Decision notice

In accordance with standard licence condition 22.14 of the Electricity Distribution Licence, the Authority hereby directs that modification proposal DCP170: '*Code Governance Review Phase 2 Changes*' be made.

Lesley Nugent

Head of Industry Codes and Licensing

Signed on behalf of the Authority and authorised for that purpose