

## **Condition 22. Distribution Connection and Use of System Agreement**

### **Licensee's obligation**

- 22.1 The licensee must take all steps within its power to ensure that the Distribution Connection and Use of System Agreement ("the DCUSA") in force under this licence at 31 May 2008 remains an agreement that:
- (a) is designed to facilitate achievement of the Applicable DCUSA Objectives set out in Part A of this condition;
  - (b) conforms to the requirements of Parts B to D of this condition in relation to the modification of the DCUSA; and
  - (c) makes express provision for the matters described in the Schedule of DCUSA Contents ("the Schedule") set out at Appendix 1, which is part of this condition.

### **Part A: Applicable DCUSA Objectives**

- 22.2 The Applicable DCUSA Objectives are these:
- (a) the development, maintenance and operation by the licensee of an efficient, co-ordinated, and economical Distribution System;
  - (b) 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;
  - (c) the efficient discharge by the licensee of the obligations imposed upon it by this licence;
  - (d) the promotion of efficiency in the implementation and administration of the DCUSA arrangements;
  - (e) compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators; and
  - (f) in relation to the Common Distribution Charging Methodology, the EHV Distribution Charging Methodology or the Common Connection Charging Methodology, the Applicable Charging Methodology Objectives listed in Part B of Standard Licence Condition 22A.

### **Part B: Principles for making a modification to the DCUSA**

- 22.3 Any proposals to modify the DCUSA must be designed to better facilitate the achievement of the Applicable DCUSA Objectives.
- 22.4 The DCUSA may be modified at any time in accordance with such procedures (including procedures for modifying those procedures) as may be Specified and are in conformity with the principles set out in paragraph 22.5.
- 22.5 Those principles are that:
- (a) proposals for the modification of the DCUSA may be made by any Electricity Distributor, any other party to the DCUSA, the Authority (in relation only to modifications ~~which it reasonably considers are necessary to comply with or implement the Regulation and/or any~~

~~relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators within the scope of paragraph 22.9EE~~), Citizens Advice and Citizens Advice Scotland, the GB System Operator, and such other persons or bodies as may be designated by the Authority;

- (b) the modification procedures for dealing with any such proposal must comply with the requirements of Part C below;
- (c) the making and implementation of any modification of the DCUSA must comply with the provisions of Part D below;
- (d) modifications to the DCUSA require Authority approval, which must be sought in accordance with the appropriate procedures set out in the DCUSA, except for modifications made pursuant to paragraph 22.9F ("the self-governance route");
- (e) modification proposals made by the Authority or the licensee in accordance with paragraphs 22.5(a) and 22.5(f)(i) respectively which ~~the Authority reasonably considers are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators fall within the scope of paragraph 22.9EE~~ are:
  - (i) to be accepted into the DCUSA modification procedures by the panel;
  - (ii) where they are raised by the licensee, not to be withdrawn without the Authority's prior consent; and
  - (iii) to proceed in accordance with any timetable(s) directed by the Authority in accordance with paragraph 22.5(f); and
- (f) the licensee and (where applicable) the panel are to comply with any direction(s) issued by the Authority under this paragraph setting and/or amending a timetable (in relation to a modification proposal which ~~the Authority reasonably considers is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or Agency for the Co-operation of Energy Regulators falls within the scope of paragraph 22.9EE~~) for the:
  - (i) licensee to raise a modification proposal; and/or
  - (ii) completion of each of the procedural steps outlined in Part C, to the extent that they are relevant; and/or
  - (iii) implementation of a modification proposal.

#### Part C: Procedures for making a modification to the DCUSA

- 22.6 The procedures contained in the DCUSA for the making of modifications to the DCUSA ("the procedures") must have as their objective the achievement of the matters set out in the following provisions of this Part C.
- 22.7 The procedures must ensure that every proposed modification is brought to the attention of all parties mentioned in or pursuant to paragraph 22.5(a).

- 22.8 The procedures must ensure that any and all representations made in respect of a proposed modification are able to be properly considered by the relevant decision makers.
- 22.9 The procedures must ensure that the question of whether any proposed modification better facilitates the achievement of the Applicable DCUSA Objectives is able to be properly evaluated.
- 22.9A. The procedures must ensure that the evaluation required under paragraph 9 in respect of the Applicable DCUSA Objective(s) includes, where the impact is likely to be material, an assessment of the impact of the proposed modifications on greenhouse gas emissions, to be conducted in accordance with any such guidance (on the treatment of carbon costs and evaluation of the impact on greenhouse gas emissions) as may be issued by the Authority from time to time.
- 22.9B The procedures must provide for the proper evaluation of the suitability of the self-governance route for any particular modification proposal in accordance with the criteria Specified pursuant to paragraph A3(f) of the Schedule.
- 22.9C. Without prejudice to paragraph 22.9EB, ~~The~~ procedures must provide that proposals for the modification of the DCUSA falling within the scope of a Significant Code Review may not be made during the Significant Code Review Phase, except:
- (a) where the Authority determines that the modification proposal may be made, having taken into account (among other things) the urgency of the subject matter of the proposal; or
  - (b) at the direction of, or made by, the Authority.
- 22.9D The procedures must provide that, where a modification proposal is made during a Significant Code Review Phase, the panel shall:
- (a) unless exempted by the Authority, notify the Authority as soon as practicable of:
    - (i) any representations received in relation to the relevance of the Significant Code Review; and
    - (ii) the panel's assessment of whether the proposal falls within the scope of the Significant Code Review and its reasons for that assessment; and
  - (b) if the Authority so directs, not proceed with the modification proposal until the Significant Code Review Phase has ended.
- 22.9E If, within twenty eight (28) days after the Authority has published its Significant Code Review conclusions, ~~the Authority issues to the licensee:~~
- (a) the Authority issues Directions to the licensee, the licensee must comply with those Directions and shall treat the Significant Code Review Phase as ended;

- (b) the Authority issues to the licensee a statement that no Directions under sub-paragraph (a) will be issued in relation to the DCUSA, the licensee must treat the Significant Code Review Phase as ended;
- (ba) the Authority raises a modification proposal in accordance with paragraph 22.5(a), the licensee shall treat the Significant Code Review Phase as ended;
- (bb) the Authority issues a statement that it will continue work on the Significant Code Review, the licensee shall treat the Significant Code Review Phase as continuing until it is brought to an end in accordance with paragraph 22.9EA;
- (c) neither Directions under sub-paragraph (a), nor a statement under sub-paragraph (b) or (bb) has been issued, nor a modification proposal under sub-paragraph (ba) has been made, the Significant Code Review Phase will be deemed to have ended.

The Authority's published conclusions and Directions to the licensee will not fetter any voting rights of DCUSA parties or members of the panel, or the procedures informing the modification report described at paragraph 22.10.

22.9E The procedures must provide that, if the Authority issues a statement under paragraph 22.9E(bb) and/or a direction in accordance with paragraph 22.9ED, the Significant Code Review Phase will be deemed to have ended when either:

- (a) the Authority issues a statement that the Significant Code Review Phase has ended;
- (b) one of the circumstances in sub-paragraphs 22.9E(a) or (ba) occurs (irrespective of whether such circumstance occurs within twenty-eight (28) days after the Authority has published its Significant Code Review conclusions); or
- (c) the Authority makes a decision consenting, or otherwise, to the modification of DCUSA following a modification proposal submitted pursuant to paragraph 22.9EB.

22.9EB The procedures must provide that, where the Authority has issued a statement in accordance with sub-paragraph 22.9E(bb) and/or a direction in accordance with paragraph 22.9ED, the Authority may submit a modification proposal for a modification falling within the scope of paragraph 22.9EE(b) to the panel.

22.9EC The procedures must provide, where the Authority submits a Significant Code Review modification proposal to the panel in accordance with paragraph 22.9EB, for the modification to be accepted into the procedures as if the steps in paragraphs 22.7-9B had been completed.

The Authority's published conclusions and Significant Code Review modification proposal will not fetter any voting rights of DCUSA parties or members of the panel, or the procedures informing the modification report described at paragraph 22.10.

22.9ED The procedures must provide that, where a proposal has been raised in accordance with paragraph 22.9E(a) or 22.5(f), or by the Authority under

paragraph 22.9E(ba) and it falls within the scope of paragraph 22.9EE(b), the Authority may issue a direction (a "backstop direction"), which requires such proposal(s) and any alternatives to be withdrawn and which causes the Significant Code Review Phase to re-commence.

22.9EEModification proposals fall within the scope of this paragraph where:

- (a) the Authority reasonably considers the modifications are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators; and/or
- (b) the modification proposal is in respect of a Significant Code Review.

22.9F The procedures must provide that modifications to the DCUSA may be made pursuant to this paragraph 22.9F (the "self-governance route") where:

- (a)
  - (i) in the view of the panel, the modification proposal meets all of the criteria Specified pursuant to paragraph A3(f) of the Schedule; or
  - (ii) the Authority has determined that the criteria Specified pursuant to paragraph A3(f) of the Schedule are satisfied and the modification proposal is suitable for the self-governance route; and
- (b) unless otherwise exempted by the Authority, the panel has sent copies of any consultation responses to the Authority at least seven (7) days before the modification report is approved by the panel; and
- (c) the Authority has not directed that the Authority's approval is required prior to the modification report being approved by the panel; and
- (d) the DCUSA parties have determined, in accordance with paragraph 22.12A, that the modification proposal or any alternative should be implemented on the basis that it would, as compared with the then existing provisions of the DCUSA, better facilitate the achievement of the Applicable DCUSA objective(s); and
- (e)
  - (i) no appeal has been raised up to and including 10 working days after the publication of the parties' determination pursuant to paragraphs 22.12A and 22.13 in respect of such a modification proposal in accordance with paragraph 22.9G; or
  - (ii) an appeal has been raised in respect of such a modification proposal in accordance with paragraph 22.9G and the Authority has not quashed the DCUSA parties' determination made pursuant to paragraphs 22.12A(a) and 22.13 (and either remitted the relevant modification proposal back to the parties for reconsideration or taken the decision on the relevant modification proposal itself following the appeal).

22.9G The procedures must provide that those persons mentioned in or pursuant to paragraph 22.5(a) may appeal to the Authority the approval or rejection of a modification proposal determined pursuant to 22.9F, provided the appeal has been made up to and including 10 working days after the publication of the parties' determination pursuant to paragraphs 22.12A and 22.13, and in

accordance with the procedures specified in the DCUSA and, in the opinion of the Authority:

- (a)
  - (i) the appealing party is likely to be unfairly prejudiced by the implementation or non-implementation of that modification proposal; or
  - (ii) the appeal is on the grounds that:
    - (1) in the case of implementation, the modification may not better facilitate the achievement of at least one of the Applicable DCUSA Objectives; or
    - (2) in the case of non-implementation, the modification proposal may better facilitate the achievement of at least one of the Applicable DCUSA Objectives; and
- (b) the appeal is not brought for reasons that are trivial or vexatious, nor does the appeal have no reasonable prospect of success.

22.9H. The procedures must provide that:

- (a) where an appeal has been raised in respect of a modification proposal in accordance with paragraph 22.9G, that modification proposal shall be treated in accordance with any decision and/or direction of the Authority following that appeal; and
- (b) if the Authority quashes the parties' determination pursuant to paragraphs 22.12A(a) and 22.13 and takes the decision on the relevant modification proposal itself following an appeal in accordance with paragraph 22.9G, the parties' determination of that modification proposal pursuant to paragraphs 22.12A(a) and 22.13 shall be treated as a recommendation pursuant to paragraphs 22.12A(b) and 22.13.

22.10 The procedures must ensure that a modification report is prepared in such manner and has all such contents as may be Specified, including:

- (a) a proposed implementation date either:
  - (i) in accordance with any direction(s) issued by the Authority under paragraph 22.5(f)(iii); or
  - (ii) where no direction has been issued by the Authority under paragraph 22.5(f)(iii), that would enable any proposed modification to take effect as soon as practicable after the decision to implement it has been reached, taking into account the complexity, importance, and urgency of that modification; and
- (b) except in the case of a modification falling within the scope of paragraph 22.9EB, a summary of and copies of all submissions made in respect of the proposed modification.
- (c) an assessment of the extent to which the proposed modification would better facilitate achieving the Applicable DCUSA Objectives and a detailed explanation of the reasons for that assessment (such assessment to include,

where the impact is likely to be material, an assessment of the impact of the proposed modifications on greenhouse gas emissions, to be conducted in accordance any such guidance on the treatment of carbon costs and evaluation of the impact on greenhouse gas emissions as may be issued by the Authority from time to time~~where applicable, an assessment of the quantifiable impact of the proposal on greenhouse gas emissions in accordance with paragraph 22.9A).~~

22.11 The procedures must ensure that the proposed implementation date may be altered with the consent of or as directed by the Authority.

22.12 The procedures must ensure that parties to the DCUSA are able to consider the modification report prepared in accordance with paragraph 22.10 and whether the modification would, as compared with the existing provisions of the DCUSA, better facilitate the achievement of the Applicable DCUSA Objectives.

22.12A The procedures must ensure that parties to the DCUSA, having regard to whether the modification would, as compared with the existing provisions of the DCUSA, better facilitate the achievement of the Applicable DCUSA Objectives, are able to vote for:

(a) the implementation or rejection of the proposed modification, in the case of a proposal that is to be determined in accordance with paragraph 22.9F; or

(b) a recommendation to the Authority to approve or reject the proposed modification, in the case of a proposal that requires Authority approval.

22.13 The procedures must ensure that all votes cast pursuant to paragraph 22.12A are compiled so that the panel may take such steps as are necessary to facilitate the implementation of any proposed modification or (as the case may be) to put forward a recommendation to the Authority along with the report prepared in accordance with paragraph 22.10.

22.13A The procedures must ensure that completion of each of the procedural steps outlined in this Part C, to the extent that they are relevant, is in accordance with any timetable(s) directed by the Authority under paragraph 22.5(f).

22.13B The procedures must provide for the revision and resubmission of the modification report prepared in accordance with paragraph 22.10 (and submitted to the Authority pursuant to the procedures described in Part C of this condition) upon, and in accordance with, a direction issued to the panel by the Authority where the Authority determines that it cannot properly form an opinion on the approval of the modification proposal.

22.13C The procedures for the modification of the DCUSA must be consistent with the principles set out in the Code of Practice, to the extent that they are relevant.

#### Part D: Implementation of a modification to the DCUSA

22.14 No modification of the DCUSA may be made unless:

(a) the parties to the DCUSA have voted, pursuant to paragraph 22.12A(a), in favour of the modification described in the relevant modification report; or

- (b) the Authority, having had regard to the Applicable DCUSA Objectives, directs the licensee, in conjunction with every other Electricity Distributor, to modify the DCUSA in such manner as is stated in that direction following the making of a recommendation to the Authority by the parties to the DCUSA pursuant to paragraph 22.12A(b).

**Part E: Interpretation**

22.15 For the purposes of this condition:

- (a) "modification" must be read in accordance with the meaning given to the term in section 111 of the Act, and any related expressions are to be read accordingly; and
- (b) words and expressions appearing in Appendix 1 that are defined under any provision of the DCUSA have the meaning given by, or are to be read in accordance with, that provision.

**Specified** means specified in the DCUSA.

**Code of Practice** means the Code Administration Code of Practice approved by the Authority and:

- (a) developed and maintained by the code administrators in existence from time to time; and
- (b) amended subject to the Authority's approval from time to time; and
- (c) re-published from time to time.

**Directions** means, in the context of sub-paragraph 22.9E(a), Direction(s) issued following publication of Significant Code Review conclusions, which will contain:

- (a) instructions to the licensee to make (and not withdraw, without the Authority's prior consent) a modification proposal;
- (b) the timetable for the licensee to comply with the Authority's Direction(s); and
- (c) the Authority's reasons for its Direction(s).

**Significant Code Review** means a review of one or more matters which the Authority considers likely to:

- (a) relate to the DCUSA (either on its own or in conjunction with any other industry code(s)); and
- (b) be of particular significance in relation to its principal objective and/or general duties (under section 3A of the Act), statutory functions and/or relevant obligations arising under EU law; and concerning which the Authority has issued a notice to the DCUSA parties (among others, as appropriate) stating:



- (i) that the review will constitute a Significant Code Review;
- (ii) the start date of the Significant Code Review; and
- (iii) the matters that will fall within the scope of the review.

**Significant Code Review Phase**

means:

- (a) the period commencing either:
  - (i) on the start date of a Significant Code Review as stated by the Authority; or
  - (ii) on the date the Authority makes a direction under paragraph 22.9ED; (a "backstop direction")
- and
- (b) ending either:
  - (i)
    - (a) on the date on which the Authority issues a statement under sub-paragraph 22.9E(b) that no Directions will be issued in relation to the DCUSA; or
    - (ii) if no statement is made under sub-paragraph 22.9E(b) or (bb), on the date on which the licensee has made a modification proposal in accordance with Directions issued by the Authority, or the Authority makes a modification proposal under paragraph 22.9E(ba); or
    - (iii) immediately under paragraph 22.9E(c), if neither a statement, a modification proposal, nor Directions are made issued by the Authority within (and including) twenty-eight (28) days from the Authority's publication of its Significant Code Review conclusions; or
    - (iv) if a statement has been made under paragraph 22.9E(bb) or a direction has been made under paragraph 22.9ED (a "backstop direction"), on the date specified in accordance with paragraph 22.9EA.

**Small Participant**

means:

- (a) a generator, supplier, distributor, or new entrant to the electricity market in Great Britain that can demonstrate to the code administrator that it is

- resource-constrained and, therefore, in particular need of assistance;
- (b) any other participant or class of participant that the code administrator considers to be in particular need of assistance; and
- (c) a participant or class of participant that the Authority has notified the code administrator as being in particular need of assistance.

22.16 Without prejudice to any rights of approval, veto, or direction the Authority may have, the licensee must use its best endeavours to ensure that procedures are in place that facilitate its compliance with the requirements of this condition including, but not limited to, modifying the DCUSA where necessary no later than ~~31 December 2013~~31 March 2017.

22.17 Appendix 1 follows immediately below.