

Modification proposal:	Distribution Connection and Use of System Agreement (DCUSA) DCP214 – Voting		
Decision:	The Authority ¹ directs this modification ² be made ³		
Target audience:	DCUSA Panel, Parties to the DCUSA and other interested parties		
Date of publication:	22 May 2015	Implementation date:	Next DCUSA release

Background

The process for modification of the DCUSA is set out in Section 1 of the DCUSA and Standard Licence Condition 22 of the electricity distribution licence. Parties to the DCUSA are grouped by 'Party Category'. The Party Categories are: Distribution Network Operators, Independent Distribution Network Operators/Offshore Transmission System Operator, Suppliers, Distributed Generators, and Gas Suppliers. Individual DCUSA Parties are able to vote on proposed changes to DCUSA. Decisions and recommendations on proposed changes depend on the level of support within all Party Categories.

Proposed changes to any provisions of DCUSA that are a 'Part 1 Matter'⁴ must be approved by 50% of parties in all Party Categories that have voted, for the recommendation to Ofgem to approve the change. For changes to a 'Part 2 Matter'⁵, 65% of voting parties in all Party Categories must approve a change for it to be made.

The modification proposal

DCP214 was raised by UK Power Networks (the Proposer) on 9 July 2014. The Proposer set out that the aim is to ensure that the recommendation made to Ofgem on a proposed change to a Part 1 Matter, or the outcome of a proposed change to a Part 2 Matter, reflects the views of parties. The modification was developed and assessed by a work group, which considered a number of potential solutions. The option the work group have proposed seeks to better align change decisions and recommendations to Ofgem with Parties' views by removing the need for consensus for change across all Party Categories. The proposal seeks to change the threshold for an 'accept' recommendation from all Party Categories to a majority of Party Categories.

DCUSA Parties' recommendation

The Change Declaration for DCP214 indicates that all parties were eligible to vote on DCP214. In each Party Category where votes were cast (no votes were cast in the DG Party Category),⁶ there was not majority (>50%) support for the proposal and for its proposed implementation date. In accordance with the weighted vote procedure, the recommendation to the Authority is that DCP214 is rejected. The outcome of the weighted vote is set out in the table below:

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

² 'Change' and 'modification' are used interchangeably in this document.

³ This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

⁴ A provision is a Part 1 Matter if it meets the criteria set out in clause 9.4 of DCUSA, ie if it is likely to have a significant impact on consumers and/or competition.

⁵ DCUSA clause 9.5 sets out that any provision is a Part 2 Matter if it does not meet the criteria in clause 9.4.

⁶ There are currently no Gas Supplier parties.

DCP214	WEIGHTED VOTING (%)							
	DNO ⁷		IDNO/OTSO ⁸		SUPPLIER		DG ⁹	
	Accept	Reject	Accept	Reject	Accept	Reject	Accept	Reject
CHANGE SOLUTION	61	39	50	50	33	67	n/a	n/a
IMPLEMENTATION DATE	70	30	50	50	33	67	n/a	n/a

Our decision

We have considered the issues raised by the proposal, the Change Declaration and Change Report dated 20 March 2015. 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 modification proposal will better facilitate the achievement of the DCUSA General objectives;¹⁰ and
- directing that the modification is approved is consistent with our principal objective and statutory duties.¹¹

Reasons for our decision

We consider this modification proposal better facilitates DCUSA General Objective 3.1.4 and has a neutral impact on the other applicable objectives.

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

The proposed change is aimed at enabling change decisions and recommendations to Ofgem to reflect the majority view of DCUSA Parties voting on changes. We note that the current arrangements are intended, among other things, to guard against bigger players having disproportionate control. They aim to strike an appropriate balance between the need to ensure change can be progressed and the need to ensure all parties are adequately represented within the voting arrangements. However, they have in practice resulted in instances where a small number of parties can have a significant influence over the voting recommendation.

We consider that a move from consensus to majority in the voting arrangements continues to achieve the aim set out when we put the DCUSA voting arrangements in place¹², whilst better reflecting the views of the industry overall in a decision or recommendation to us. We note that there are mechanisms in place to continue to ensure bigger parties do not have disproportionate control. For example, decisions on Part 2 changes can be appealed to Ofgem. In relation to Part 1 matters, the outcome of the vote results in a recommendation to the Authority and in making our decision we take into account the views of all parties. Majority support for change, as opposed to a

⁷ Distribution Network Operator

⁸ Independent Distribution Network Operator/Offshore Transmission System Operator

⁹ Distributed Generator

¹⁰ 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.

¹¹ The Authority's statutory duties are wider than matters that the Parties must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

¹² <https://www.ofgem.gov.uk/publications-and-updates/governance-electricity-distribution-commercial-arrangements-conclusions-and-final-proposals>

requirement for consensus, is consistent with the arrangements under other industry codes.

We recognise however that respondents raised concerns, including about the potential risk of this change reducing the voice of smaller parties. We encourage the DCUSA Panel and parties to keep this issue under review, for example through monitoring DCUSA voting outcomes, and bring forward any further change if there is evidence of any unintended adverse outcomes.

Other issues

We note that the working group considered a number of options that were not ultimately developed, including, for example, Panel voting on DCUSA modifications (ie as opposed to Party voting). We are also currently consulting on potential code governance reform¹³. Among other things, we note in our consultation that whilst it is inclusive, a party voting system may not necessarily be an effective way of ensuring that change recommendations and decisions are made in reference to the applicable code objectives. We are seeking views on whether there is a need to align decision making processes across the codes. We are also seeking views on Panel composition and whether independent Panel representation should be extended to other codes. Subject to the outcome of our consultation process, further change to the DCUSA voting and change processes may be proposed. We encourage DCUSA Parties to engage in our consultation process.

Decision notice

In accordance with standard licence condition 22.14 of the Electricity Distribution Licence, the Authority hereby directs that modification proposal DCP214: Voting be made.

Lesley Nugent

Head of Industry Codes and Licensing

Signed on behalf of the Authority and authorised for that purpose

¹³ <https://www.ofgem.gov.uk/publications-and-updates/open-letter-further-review-industry-code-governance>