

## Pants On Fire, episode 7

by Franck Latrémolière on Monday 22 June 2015

1. In May 2015, Ofgem forced a modification to the DCUSA voting rules by directing the implementation of DCP 214.
2. For Part 2 Matters (“self-governance” changes which DCUSA Parties can implement by a vote without an Ofgem decision), the new rules are set out in the new wording of clauses 13.6–13.7 of DCUSA version 7.3, quoted in exhibit 1.

### Exhibit 1 The post-DCP 214 DCUSA voting rules for Part 2 Matters

13.6 Where a Change Proposal relates to a Part 2 Matter, that proposal shall be accepted where, for the majority of the Party Categories that were eligible to vote:

13.6.1 the number of Groups in each Party Category which voted to accept the proposal is greater than 65% of the total number of Groups in that Party Category which voted; and

13.6.2 the sum of the Weighted Votes of the Groups in each Party Category which voted to accept the proposal is greater than 65%.

13.7 In all other cases a Change Proposal which relates to a Part 2 Matter shall be rejected. Notwithstanding such rejection, [in some cases a failed Part 2 change proposal is reprocessed as a Part 1 Matter].

3. Table 1 shows a few illustrative examples of votes, and, as far as I can tell, the outcome of the previous rules and the new DCP 214 rules for a part 2 matter.

**Table 1 Worked examples of DCUSA clauses 13.6–13.7**

	Example A	Example B	Example C
DNO vote	67% for, 33% against	67% for, 33% against	67% for, 33% against
IDNO vote	67% for, 33% against	67% for, 33% against	67% for, 33% against
Supplier vote	67% for, 33% against	100% against	60% for, 40% against
New clause 13.6.1 test	Yes: 3/3 > 65%	Yes: 2/3 > 65%	Yes: 2/3 > 65%
New clause 13.6.2 tests	Yes: 67% > 65% thrice	Yes: 67% > 65% twice	No: 60% ≤ 65%
Result under DCP 214	Change made	Change made	Change rejected
Result under old rules	Change made	Change rejected	Change rejected

4. Example A shows how both sets of rules accept a change when there is a qualified majority in all categories.
5. Example B shows how the old rules protect against changes which are imbalanced between operators of distribution networks and suppliers, which are the main users of these networks. The new rules fail to provide this type of protection.
6. Example C shows a case in which DCP 214 protects a 40 per cent minority of suppliers in the same way as the current rules.
7. A comparison between example B and example C shows a defect in the DCP 214 tests. The only difference between example B and example C is a change in the supplier vote: more suppliers support the change in example C than in example B. Yet under the new rules the example C change supported by a small majority of suppliers is rejected, but the example B change opposed by all suppliers is accepted.
8. Could clause 13.6.2 be construed in a way that does not suffer from this perversity? I do not see how this could be achieved without torturing the language beyond what is permissible. The words “each Party Category which voted to accept the proposal” can only mean what they say — not a subset of the categories which voted in favour.
9. Ofgem’s DCP 214 decision document does not address this issue. It looks like Ofgem has failed to read the legal text carefully.
10. The DCP 214 change report also appears to be silent about the practical effects of the proposal. The 14 pages of the report are taken by the story of how the working group chose between options rather than an analysis of why the chosen option is an improvement over doing nothing. Section 8 of the change report is particularly poor. A good regulator would have turfed the change report out on these grounds alone.
11. The original DCP 214 proposal form contained a proposed change that was sensible enough. It was very different from what Ofgem approved. The proposal was apparently perverted by the DCP 214 working group during the definition process.<sup>1</sup>
12. I do not know whether the issue outlined above is just the result of a drafting accident, or whether someone on the DCP 214 working group had evil plans to use the perversity introduced by DCP 214.
13. What is certain is that Ofgem’s behaviour is consistent with that of a captured regulator who does not put much effort into validating what (a small section of) the industry tells it before approving a constitutional change to industry governance. Ofgem did not even notify the wider public of the details of the proposal, or engage in any public consultation, before approving DCP 214.

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<sup>1</sup> But the original change proposer, UK Power Networks, is not innocent: it voted for the perverted final form of DCP 214.