Pants On Fire, episode 9

by **Franck Latrémolière** on **Thursday 25 June 2015**

1. In May 2015, Ofgem ordered a modification to the DCUSA voting rules by directing implementation of DCP 214.

The DCP 214 change

2. The new rules imposed by Ofgem are set out in the new wording of clauses 13.5 to 13.7 of DCUSA (version 7.3).

3. Exhibit 1 reproduces clause 13.5, which applies to part 1 matters (most of the significant DCUSA changes are part 1 matters). The result of the vote on a part 1 matter does not determine whether the change is made, but it affects which appeal procedures are available against Ofgem's decision.

Exhibit 1 The post-DCP 214 DCUSA voting rules

> 13.5 Where a Change Proposal relates to a Part 1 Matter, the Parties shall:
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> 13.5.1 be deemed to recommend to the Authority that the proposal should be accepted where, for the majority of the Party Categories that were eligible to vote [and in which votes were cast: clause 12.17], the sum of the Weighted Votes of the Groups in each Party Category which voted to accept the proposal is more than 50%; and
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> 13.5.2 in all other cases, be deemed to recommend to the Authority that the proposal should be rejected.

4. Episode 7 of Pants On Fire quotes and criticises Clauses 13.6 and 13.7 on additional grounds not connected with those in the present episode.

5. Under the previous rules, a change was only treated as supported only if it had majority support (50 per cent for part 1, 65 per cent for part 2) in every party category where votes had been cast. These rules favoured changes which attracted consensus, limiting the extent to which DCUSA could be a vehicle of block war between distributors and suppliers.

6. The previous rules also provided a degree of protection for parties in categories containing smaller or less powerful companies, for example IDNOs: part 2 changes could only be made with their consent or silence, and if they were prejudiced by a potential Part 1 change, they could use their vote to ensure that they would have access to the code modification appeal process after any adverse Ofgem decision.

7. DCP 214 did not change the vote weighting systems applied in each party category.

Party categories used for DCUSA voting

8. Table 1 lists the party categories relevant to DCUSA voting, and their membership according to a list of parties downloaded from the DCUSA website.

Table 1 Number of parties in each DCUSA party categories

Category	Number	Description
The DNO Parties	14	The operators of the 14 regional DNO networks.
The IDNO/OTSO Parties	6	National Grid Electricity Transmission, and five licensed electricity distributors who are not in the DNO category.
The Supplier Parties	105	Licensed electricity suppliers.
The DG Parties	1	Esso Petroleum Co Ltd (company number 26538).
The Gas Supplier Parties	0	

9. The gas supplier category appears to be intended for future use by any gas suppliers who are not electricity suppliers and are involved in smart meter communications.

10. Esso Petroleum Co Ltd is what it sounds like. The company's accounts describe it as "a major refiner, distributor and marketer of petroleum products in the United Kingdom". It is a BSC signatory, classified as a "Trading Party – Generator".

11. The only definition of "DG Party" in DCUSA seems to be in the introduction to the agreement, where it is recited that:

> (D) The DG Parties are under certain obligations, under other industry agreements, regarding distribution use of system arrangements, and have agreed to accede to this Agreement in order to meet those obligations.

12. Given this, it seems likely that Esso is a party to DCUSA because it has a power station which is on a distribution network but where the output is traded under the CVA arrangements of the BSC: it would then have to be a DCUSA party so as to be recognised as a "user" of the relevant distribution system. There are many other operators of distributed generation, but these are not eligible to be DG Parties to DCUSA because they are either in another category of DCUSA party (e.g. supplier) or because they sell their electricity to a DCUSA supplier before that electricity is traded under the BSC and/or put onto a distribution system governed by DCUSA, so that they are not under any obligations about distribution use of system arrangements.

13. The new arrangements damage Esso's position to the same extent they damage all minorities; for example, they are no longer properly protected against a detrimental part 2 change. But the new arrangements also dramatically increase the power of Esso's vote, since Esso's one vote in favour of a change proposal can outweigh a consensus of all suppliers to flip the recommendation from reject to accept.

14. Can an electricity industry voting system in which the view of Esso counts as much as a consensus views of all electricity suppliers really be said to reflect a "majority view"? I don't think so.

15. Ofgem's direction to implement DCP 214 rests on a claim that the change is good for "the promotion of efficiency in the implementation and administration of this Agreement and the arrangements under it". Exhibit 2 reproduces Ofgem's reasoning.

Exhibit 2 Ofgem's analysis of the benefits of DCP 214

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

16. Exhibit 2 is 100 per cent assertion of prejudice, zero per cent reasoning. Ofgem does not explain why it wants recommendations to reflect the majority view, or why it is a problem that, in some cases, a small number of parties can have a significant influence over the recommendation, or how any of this relates to efficiency in implementation and administration. An appeal to consistency with other codes is not a logical argument: maybe these other codes are wrong and DCUSA was right.

17. Ofgem does not acknowledge the fact that arrangements under which Esso carries the same weight as a consensus of all suppliers do not give a fair reflection of majority view. Also, it seems sly for Ofgem to do something which will, in some cases, prevent an affected party from appealing a future Ofgem decision, without explicitly acknowledging that this is what it is doing.

18. The final sentence represents an abdication of independent regulatory oversight. And how does one recognise "unintended adverse outcomes" in a context where Ofgem has just imposed, presumably intentionally, a change with likely adverse outcomes?