



Commission for Energy Regulation
An Coimisiún um Rialáil Fuinnimh

Derogation Criteria for the Demand Connection Network Code

Decision Paper

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Regulating Water, Energy and Energy Safety in the Public Interest

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Executive Summary

Commission Regulation (EU) 2016/1388 of 17 August 2016 a Network Code on Demand Connection (DCC)¹ is one of a suite of European network codes and guidelines that have been developed following implementation of the European Third Energy Package.

The DCC is one of three regulations related to grid connection that specify the requirements that apply to all new demand (not storage devices) connections including:

- New distribution networks connecting to the transmission system;
- New demand users connecting to the transmission system; and
- New customers wanting to provide demand side response services.

The DCC allows all affected parties to seek derogations from the CER from one or more of the provisions of the DCC.

On 13 April 2017 the CER published a public consultation on the criteria for granting derogations pursuant to Articles 52 and 53 of the DCC – [CER/17/083](#). In this consultation paper the CER proposed the criteria that the CER will apply when a derogation from one or more provisions of the DCC is considered.

The CER did not receive any responses to the consultation paper.

Following consideration of the public consultation and that there were no responses received, the CER has decided to adopt the following criteria:

- The Impact on the Electricity System of Non-compliance;
- The Reason for Non-compliance/Technical Limitation;
- The Level of Non-compliance and Efforts Made to Improve/Achieve/Maximise Compliance;
- The Costs Involved to Achieve Compliance;
- The Impact on the Interests of Consumers/Other Parties;
- The Potential for Discriminating Treatment of Existing Demand Units;
- The Effect on Cross-Border Trade;
- The Cost-Benefit Analysis Pursuant to Requirements of the DCC Article 49;
- The Required Duration of Derogation.

The CER considers that the derogation assessment criteria proposed will allow the CER to appropriately assess any future DCC derogation requests and ensure that the CER continues to protect the interest of consumers.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1388&from=EN>

The CER will carry out a holistic assessment against all of the criteria and the CER's decision will depend on the specific case. In other words, the application will be viewed in the round against the criteria, failure to meet an individual criterion will not necessarily mean that the application fails.

Public Impact Statement

The DCC should help make it easier and more efficient to operate the electricity system, by introducing a common, clear set of requirements which every new demand connection to the electricity network across Europe will need to meet. The DCC will provide a clear legal framework for grid connections, facilitate Union-wide trade in electricity, ensure system security, facilitate the integration of renewable electricity sources, increase competition, and allow more efficient use of the network and resources, for the benefit of consumers.

The swift completion of a fully functioning and interconnected internal energy market in Europe is crucial to maintaining security of energy supply, increasing competitiveness and ensuring that all consumers can purchase energy at affordable prices. DCC is seen as one of the main drivers for creating harmonised solutions and products necessary for an efficient pan-European (and global) market in generator technology.

Together, the network codes will facilitate the achievement of the three objectives of the Third Package:

- The secure operation of European power systems;
- The integration of large volumes of low carbon generation; and
- The creation of a single European electricity market.

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Glossary of Terms and Abbreviations

Abbreviation or Term	Definition or Meaning
DCC	Commission Regulation (EU) 2016/1388 of 17 August 2016 a Network Code on Demand Connection
TSO	Transmission System Operator
DSO	Distribution System Operator

1 Introduction

1.1 Commission for Energy Regulation

The CER is Ireland's independent energy and water regulator. The CER was established in 1999 and now has a wide range of economic, customer protection and safety responsibilities in energy. The CER is also the regulator of Ireland's public water and wastewater system. At a high-level, the CER's overall mission is to act in the interests of consumers is to ensure that:

- Energy and gas are supplied safely;
- The lights stay on,
- The gas continues to flow;
- There is a reliable supply of clean water and efficient treatment of wastewater;
- The prices charged are fair and reasonable;
- The environment is protected; and
- Regulation is best international practice.

Further information on the CER's role and relevant legislation can be found in [here](#).

1.2 Background

The European network codes intend to deliver a harmonised set of rules for the operation of the gas and electricity sector in Europe. Commission Regulation (EU) 2016/1388 of 17 August 2016, Network Code on Demand Connection (DCC), is one of a suite of European Electricity network codes and guidelines that have been developed following implementation of the Third Package.²

The DCC entered into force on 7 September 2016. The DCC is one of three regulations related to grid connection that specify the requirements that apply to all new demand (not storage devices)³ connections included new distribution networks connecting to the transmission system, new demand users connecting to the transmission system and new customers wanting to provide demand side response services. The DCC sets out

² The Third Energy Package consists of two Directives and three Regulations: Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity, Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks, Regulation (EC) No 713/2009 establishing an Agency for the Cooperation of Energy Regulators.

³ Any pump-storage Power Generating Module which has both generating and pumping operation mode does not have to meet the requirements of this Network Code. Any pumping module within a pump-storage station which only provides pumping mode is subject to the requirements of this Network Code.

the technical requirements that will apply to all new demand “main plant and equipment” procured after 7 September 2018 and does not apply to existing demand connections.⁴

Existing demand connections are not subject to the requirements of the DCC except where an existing transmission-connected demand facility, an existing transmission-connected distribution facility, an existing distribution system, or an existing demand unit within a demand facility at a voltage level above 1,000V or a closed distribution system connected at a voltage level above 1,000V is modified to the extent where its connection agreement has to be substantially revised. In addition the National Regulatory Authority may decide, following an application by the TSO to require compliance by an existing demand connection.

The DCC allows demand facility owners or prospective owners, and distribution system operators or closed distribution system operators, and relevant system operators or prospective operators to seek derogations from the CER from one or more of the provisions of the DCC⁵. Moreover, DCC Article 52(11) allows for third parties to apply for derogations for demand units within a demand facility or a closed distribution system connected at a voltage level of or below 1,000V. A request for a derogation under this Article may be made by a third party on behalf of the demand facility owner or prospective owner, or on behalf of the closed distribution system operator or prospective operator. Such a request may be for a single demand unit or multiple demand units within the same demand facility or closed distribution system.

The DCC contains articles that describe the process for derogating from the DCC. Derogation requests from demand facility owners or prospective owners are to be filed with the relevant System Operator (DSO or TSO). Additionally relevant System Operators can also file request derogations for transmission-connected demand facilities, transmission-connected distribution facilities, distribution systems, or demand units within a demand facility or a closed distribution system connected or to be connected to their network. The DCC gives the CER the role of reviewing, and making decisions on the DCC derogation requests. At the end of the implementation phase, the CER may review and if necessary revise and refine the criteria to assess derogation requests under the DCC. The DCC provides for the revision and modification of the criteria, at most once a year.

The CER notes that the full implementation of the requirements of the DCC will entail changes to Grid Code requirements, connection contracts etc. for all new demand (not storage devices) connections, which the TSO and DSO are currently assessing.

The full suite of implementation processes and requirements for the DCC are required to be in place by 7 September 2018.

⁴ See Article 4 of the DCC

⁵ See Articles 50-55 of DCC

1.3 Legal Background

Regulatory authorities may grant demand facility owners or prospective owners, and distribution system operators or closed distribution system operators, and relevant system operators or prospective operators derogations from one or more provisions of this Regulation for new and existing transmission-connected demand facilities, transmission-connected distribution facilities, distribution systems and demand units in accordance with Articles 51 to 53 of the DCC.

A regulatory authority may revoke a decision granting a derogation if the circumstances and underlying reasons no longer apply or upon a reasoned recommendation of the European Commission or reasoned recommendation by ACER pursuant to Article 55 (2) of the DCC.

Article 51(1) states:

“Each regulatory authority shall specify, after consulting relevant system operators, demand facility owners, DSOs, CDSOs, and other stakeholders whom it deems affected by this Regulation, the criteria for granting derogations pursuant to Articles 52 and 53. It shall publish those criteria on its website and notify them to the Commission within nine months of the entry into force of this Regulation. The Commission may require a regulatory authority to amend the criteria if it considers that they are not in line with this Regulation. This possibility to review and amend the criteria for granting derogations shall not affect the derogations already granted which shall continue to apply until the scheduled expiry date as detailed in the decision granting the exemption.”

1.4 Purpose of this Paper

On 13 April 2017 the CER published a public consultation on the criteria for granting derogations pursuant to Articles 52 and 53 of the Commission regulation (EU) 2016/1388 " Demand Connection" (DCC) (CER/17/083). The purpose of this paper is to present the CER's position on the matters raised and the CER's decision on this matter.

1.5 Responses Received to the Consultation

On 13 April 2017 the CER consulted on the derogation assessment criteria that the CER proposed to use to assess derogation requests under the DCC. The CER did not receive any responses to the consultation paper.

1.6 Related documents

- [Commission Regulation \(EU\) 2016/1388 of 17 August 2016 a Network Code on Demand Connection](#)

- [CER/17/083](#): Criteria for Granting Derogations Pursuant to Articles 52 and 53 of the Demand Connection Commission Regulation (DCC) (EU) 2016/1388 of 17 August 2016

1.7 Structure of this paper

This decision paper is structured as follows:

- **Section 1**, provides an introduction to the CER and provides background information to this decision paper.
- **Section 2**, outlines the CER's decision and the next steps with regards to the criteria for granting derogations pursuant to Articles 52 and 53 of the Commission regulation (EU) 2016/1388 DCC.

2 Decision

Demand facility owners or prospective owners, and distribution system operators or closed distribution system operators, and relevant system operators or prospective operators in accordance with the DCC, may request a derogation to one or several requirements of the DCC for demand units within their facilities. Also, third parties on behalf of the demand facility owners or prospective owners, or on behalf of the closed distribution system operators or prospective operators in accordance with the DCC, may request a derogation for demand units within a demand facility or a closed distribution system connected at a voltage level of or below 1,000V.

A request for a derogation should be submitted to the relevant System Operator. The CER will seek the view of the relevant System Operator(s) before reviewing an application for a derogation. The CER will provide further guidance on this process in due course.

Following consideration of the consultation and the CER has decided to adopt the following criteria: (the wording is the same as in the consultation)

1. The Impact on the Electricity System of Non-compliance

The applicant has demonstrated that the derogation request will not have adverse effects on the electricity network system.

2. The Reason for Non-compliance/Technical Limitation

The reason for non-compliance provided by the applicant has been justified.

3. The Level of Non-compliance and Efforts Made to Improve/Achieve/Maximise Compliance

The applicant has demonstrated that the applicant has investigated reasonable solutions to non-compliance and has made reasonable efforts to maximise compliance.

4. The Costs Involved to Achieve Compliance

The applicant has demonstrated evidence of the materiality of the issue and demonstrated that the cost involved to achieve compliance is material and sufficiently high to justify a derogation.

5. The Impact on the Interests of Consumers/Other Parties

The applicant has proved that the derogation request will not have negative impact on the interest of consumers (e.g. competition, sustainable development, health and safety and other affected parties).

6. The Potential for Discriminating Treatment of Existing Demand Units

The applicant has confirmed with the relevant system operator that none of the other comparable demand units (in terms of size and technology) facility owners have

already demonstrated that it is possible to comply with the relevant provision of the DCC.

7. The Effect on Cross-Border Trade

The applicant has demonstrated that the requested derogation would have no adverse effect on cross-border trade.

8. The Cost-Benefit Analysis Pursuant to Requirements of the DCC Article 49

The applicant has presented a robust, economic case that supports the application for a derogation.

9. The Required Duration of Derogation

The applicant has demonstrated that the time period requested for the derogation is appropriate.

The CER considers that the derogation assessment criteria proposed will allow the CER to appropriately assess any future DCC derogation requests and ensure that the CER continues to protect the interest of consumers.

The CER will carry out a holistic assessment against all of the criteria and the CER's decision will depend on the specific case. In other words, the application will be viewed in the round against the criteria, failure to meet an individual criterion will not necessarily mean that the application fails.