

**Stage 01: Initial Written Assessment**

# CAP179 Prevention of Timing Out of Authority Decisions

CAP179 seeks to prevent Authority decisions on Amendment Proposals from "timing out"



National Grid recommends that CAP179 proceed to Working Group



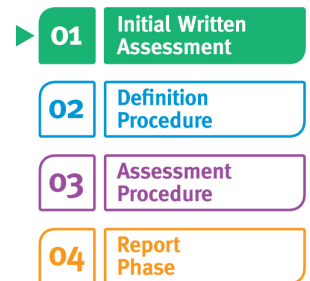
Medium Impact:  
Amendments Panel, the Authority, Working Groups and National Grid



Low Impact:  
All CUSC Parties affected by Amendment Proposal Implementation Dates

What stage is this document in the process?

*The following stages are the current BSC stages and will be amended to reflect the Code of Practice*



*Use file/properties/custom to adjust the contents of the box below*

Panel paper number

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## About this document:

**This document is a trial Initial Written Assessment (IWA) which has been produced by National Grid, in its role as code administrator, at the request of the CUSC Governance Standing Group. It has been written as though it had been produced at the beginning of the process for CAP179, i.e. prior to the first Panel meeting at which CAP179 were to be discussed.**

This document is an Initial Written Assessment which will be presented by National Grid to the Amendments Panel on 29<sup>th</sup> January 2010. The Panel will consider the Proposer's recommendation, and agree whether this Proposal should proceed to consultation or be referred to a Working Group for development.

This document has a number of attachments as follows:

Attachment A: CAP179 Amendment Proposal

Attachment B: Draft CAP179 Working Group Terms of Reference



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### Any questions?

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Proposer:

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# 1 Why Change?

## What is "Timing Out"?

This Amendment Proposal seeks to remove the potential for an Authority decision on an Amendment Proposal to "time out". "Timing out" occurred within the industry in 2007 when the Authority was unable to provide its decision on BSC Modification Proposals P198, P200, P203 and P204 ("the Losses Modifications") before the final date allotted for such a decision in the Final Modification Report. A subsequent Judicial Review ruled that when the Authority did not make its decision by the latest date included in the Final Modification Reports, it lost the ability to make any decision on those Proposals.

Following the Judgement on the Losses Modifications, Ofgem issued a number of industry consultations on the subject of Timing Out, the most recent of which, in May 2009, included indicative modifications to National Grid's Transmission/Transporter licences to try and prevent "timing out" reoccurring. The indicative drafting required changes to be raised to the BSC, CUSC and UNC modification processes.

## Why is prevention of "Timing Out" important?

The proposer states that "timing out" of an Authority decision on an Amendment Proposal would result in uncertainty among the industry as to the future of that Amendment Proposal, as well as uncertainty over the timescales related to that proposal. Timing out also has the potential to waste resources in terms of the costs incurred by industry participants in raising and considering an Amendment Proposal which may then "time out".

## "Timing Out" and the CUSC

The Proposer acknowledges that "timing out" has not occurred to date for any CUSC Amendment Proposal, but considers that raising an Amendment Proposal to address timing out is an efficient way for the industry to deal with the issues raised by industry participants during Ofgem's consultations. The proposer notes that it has already raised modification proposals for both the Balancing and Settlements Code (BSC) and the Uniform Network Code (UNC).

## What else does CAP179 try to address?

In addition to the issue of timing out, the Proposer has identified two further issues which it seeks to address through CAP179:

### 1. Concerns over timely decision making.

During Ofgem's consultations on "timing out", industry participants raised concerns over timely decision making. CAP179 seeks to address this by formalising a process whereby the Amendments Panel may write to the Authority to highlight where a decision has not been provided, either within a given timeframe or where certain conditions are met.

### 2. Ongoing validity of industry analysis supporting a Panel recommendation.

A further concern raised by industry participants was that, where a significant period of time has elapsed between a recommendation being provided to the Authority and the Authority making a decision, the underlying circumstances will have changed and any supporting analysis may be out of date. CAP179 provides a mechanism for the Panel to consult industry participants on time-related concerns which could include the validity of analysis where a period of time has passed since its completion.

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### How will CAP179 resolve the issues identified?

CAP179 proposes that, in line with current working practice for the CUSC and wherever possible, the Amendments Panel should propose Implementation Dates using the construction "XX business days or XX months after receipt of an Authority decision", which would prevent "timing out" occurring.

However, CAP179 also recognises that there may be some cases where a "fixed" implementation date (with an associated decision by date) may be preferable, for example where there are system development requirements. In those instances, CAP179 proposes that the Panel should be mindful of the potential for "timing out" when setting proposed Implementation Dates.

CAP179 suggests that where a "fixed" Implementation Date is proposed, a process should be formalised within the CUSC whereby the Authority, upon identifying that it will be unable to meet a "decision by"/Implementation Date, writes to the Panel setting out its reasons for not meeting such a date and requesting a revised set of dates. Upon receipt of such a notification, the Panel would then consult with the industry on the following:

- a) a revised set of implementation dates;
- b) whether the industry considers there to be any other relevant time-bound issues arising, for example, any issues relating to the "expiry" of any supporting analysis that was undertaken to support the original Amendment Report sent to the Authority.

The final element of CAP179 seeks to address the issue of timely decision making by the Authority and proposes a further new process. Following receipt by the Authority of a final Amendment Report, the Panel Secretary, at the request and on behalf of the Amendments Panel, may write to the Authority to request the Authority to give an indication of the likely date by which the Authority's decision on an Amendment Proposal shall be made. This process could be triggered either by a set period of time elapsing or by the Amendments Panel raising a reasonable concern related to the pending Amendment Proposal, for example that the analysis may soon become out of date.

The proposer notes that the second and third elements above are similar to the process that exists within the UNC modification procedures, which is included for reference in the attachment to the Amendment Proposal, which is included as Attachment A to this IWA.

### Interaction with Ofgem's Code Governance Review

In CAP179 Amendment Proposal, the proposer refers to the "send back" powers proposed by Ofgem in its Code Governance Review Initial Proposals consultation. The proposer's interpretation of the proposed powers is that the Authority would have the ability to request additional analysis, information or a revised timetable where it is unable to make a decision on an Amendment Proposal against the relevant objectives, and to request a revised final Amendment Report which could include a revised Amendments Panel Recommendation Vote based upon the updated information produced.

National Grid notes that Ofgem is due to issue its Code Governance Review Final Proposals at the end of January 2010.

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### 3 Legal Text

The Proposer has not suggested any legal text.

### 4 Impacts & Costs

#### Estimated Costs

Estimated code administration costs based on proposed timetable	
Meeting costs	£XXX for 2 Working Group meetings
National Grid resource	20 man days, equating to £11,775

The costs above are estimates and assume:

- Two Working Group meetings held at National Grid's offices
- Working Group chairman and technical secretary provided by National Grid
- Resource costs are based on National Grid's "Charge-Out Rates", published in Schedule 3 of The Statement of Use of System Charges, on National Grid's website at: <http://www.nationalgrid.com/uk/Electricity/Charges/chargingstatementsapproval/index.htm>
- The published rates include overheads.

Indicative industry costs
None identified.

#### Impacts

Impact on CUSC Parties
Where CUSC Parties are affected by Implementation Dates, they may be impacted by the proposed Amendment.

Impact on Code Administrator	
Area of National Grid's business	Potential impact
Code Administration	National Grid would need to assist a Working Group or the Amendments Panel in formulating Implementation Dates appropriately, to prevent Timing Out.  In addition, the Panel Secretary may be required to write to the Authority to request a likely decision date.

Impact on Code	
Code section	Potential impact
Section 8: CUSC Amendment	Include new process for the Amendments Panel to consult on the Authority's request for revised implementation dates and any associated time-bound issues.  Include new process to allow the Panel Secretary to

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Impact on Code	
	write to the Authority to request an indication of likely date for decision, after the Authority has received a final Amendment Report.
Section 11: Interpretation and Definitions	Potential new definitions relating to "fixed" implementation dates.

Impact on Core Industry Documents and other documents	
Document	Potential impact
Balancing and Settlements Code	No impact, but National Grid has raised BSC Modification P250.
Uniform Network Code	No impact, but National Grid has raised UNC Modification 0281.

## 5 Proposed Progression

The Proposer recommends that CAP179 be sent to a Working Group for further development. National Grid recommends that the CAP179 Working Group be established, which may include members of the Governance Standing Group. National Grid proposes that the Working Group report be submitted to the April 2010 meeting of the Amendments Panel for its consideration and the Panel Recommendation Vote.

### Terms of Reference

A copy of the draft terms of reference to be approved by the Amendments Panel is included as Attachment B to this IWA. We have reproduced the proposed timetable here for ease of reference.

Activity	Deadline/Date	Notes
Agree Working Group terms of reference	26 <sup>th</sup> February 2010	Panel Members to approve
First Working Group meeting	9 <sup>th</sup> March 2010	
Draft Working Group consultation document & circulate for comment	16 <sup>th</sup> March 2010	Circulate to Working Group members for comment
Deadline for comments on consultation document	5pm on 23 <sup>rd</sup> March 2010	
Issue Working Group consultation document	25 <sup>th</sup> March 2010	2 week consultation
Deadline for responses to Working Group consultation	5pm on 13 <sup>th</sup> April 2010	
Second Working Group meeting	w/c 19 <sup>th</sup> April 2010	To discuss consultation responses and any WG Consultation Alternative Requests
Draft Working Group report and circulate for comment	26 <sup>th</sup> April 2010*	Circulate to Working Group members for comment
Deadline for comments on draft Working Group report	5pm on 4 <sup>th</sup> May 2010*	

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Activity	Deadline/Date	Notes
Issue Working Group report to National Grid	12 <sup>th</sup> May 2010*	
Publish Working Group report with Panel papers	13 <sup>th</sup> May 2010*	
Present Working Group report to Amendments Panel	21 <sup>st</sup> May 2010*	Working Group Chair to present

## 6 The Case for Change

The Proposer believes that CAP179 will better facilitate the achievement of Applicable CUSC Objective (a) "the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence". The Proposer refers specifically to the obligation under paragraph 6 of standard condition C10 of the licence:

"6. The licensee shall establish and operate procedures for the modification of the CUSC (including procedures for modification of the modification procedures themselves), so as to better facilitate achievement of the applicable CUSC objectives, which procedures shall provide [...]:

[...]

- (c) for the timetable (referred to in sub-paragraph (b)(v)) for implementation of any modification to be such as will enable the modification to take effect as soon as practicable after the Authority has directed such modification to be made, account being taken of the complexity, importance and urgency of the modification, and for that timetable to be extended with the consent of or as required by the Authority."

The Proposer states that CAP179 seeks to clarify and formalise the arrangements by which an implementation timetable could be extended as described in paragraph 6 of the licence above and therefore better meets Applicable CUSC Objective (a).

## 7 Recommendation

On the basis of the IWA, National Grid invites the Panel to:

- DETERMINE that CAP179 progress to Working Group
- AGREE the proposed timetable that the Working Group report will be submitted to the April 2010 Amendments Panel meeting
- AGREE the proposed CAP179 Working Group terms of reference

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