

Amendment proposal:	Connection and Use of System Code (CUSC): Amendment to the CUSC Governance Process (CAP180)		
Decision:	The Authority ¹ directs that this proposal be made ²		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the CUSC and other interested parties		
Date of publication:	16 June 2010	Implementation Date:	30 June 2010

Background to the amendment proposal

A CUSC amendment proposal may be raised by either a CUSC party, a BSC party or the National Consumer Council (hereafter referred to as Consumer Focus). If the CUSC panel considers that the proposal is in need of further development a Working Group is formed, the membership of which is nominated by CUSC parties only.

If the Working Group considers that there is an alternative approach which would better facilitate achievement of the CUSC applicable objectives compared with the proposal, a Working Group Alternative Amendment (WGAA) may be raised.

After development by the Working Group of the original amendment proposal and (if applicable) any WGAA, the Working Group will conduct its own consultation. CUSC parties may raise a Working Group Consultation Alternative Request in response to this consultation.

If a majority of the members of the Working Group or the Chair of that group believes that the Working Group Consultation Alternative Request will better facilitate the CUSC objectives compared with the current version of the CUSC, the Working Group shall develop it as a WGAA, or amalgamate it with one or more other draft WGAA's. This can lead to the subsequent formal consultation conducted by National Grid having several WGAA's alongside the original.

The amendment proposal

CAP180 was raised following a review by the CUSC Governance Standing Group³ of the procedures summarised above. CAP180 seeks to amend two aspects of the modification rules, firstly by aligning the rights of non-CUSC parties with those of CUSC parties as follows:

- i) Extending the right to raise Working Group Consultation Alternative Requests to BSC parties and Consumer Focus; and
- ii) Extending the right of BSC parties and Consumer Focus to nominate individuals from amongst themselves to become Working Group members.

Secondly, CAP180 seeks to improve the governance of Working Groups by:

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

³ The proposal was originally discussed in the Governance Standing Group meeting on 29th October 2009 and followed up on 26th November 2009 and 28th January 2010. Minutes which can be found at: - <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/workingstandinggroups/gsg/>

- iii) Removing a Working Group member's right to invite an observer to a meeting (limiting this right to the Chair);
- iv) Removing a Working Group member's right to invite an observer to speak at a Working Group meeting (limiting this right to the Chair); and
- v) Adding provisions to enable observers to be removed by the Chair should they cause disruption at a Working Group meeting.

CUSC Panel⁴ recommendation

On 30 April 2010, the CUSC Panel voted unanimously in favour of CAP180. All panel members considered that the proposal would better facilitate applicable objective a), and all but one member felt that it would better facilitate objective b).

The Authority's decision

The Authority has considered the issues raised by CAP180 and the final Amendment Report (AR) dated 19 May 2010. The Authority has considered and taken into account the responses to NGET's consultation on CAP180 which are attached to the AR⁵. The Authority has concluded that:

1. implementation of the amendment proposal will better facilitate the achievement of the applicable objectives of the CUSC⁶; and
2. directing that the amendment be made is consistent with the Authority's principal objective and statutory duties⁷.

Reasons for the Authority's decision

We note that each of the four respondents were in support of the implementation of this proposal, though there were few substantive comments.

We agree that the implementation of Parts i) and ii) of this proposal promote equality in the treatment of CUSC parties and certain non-CUSC parties under the CUSC modification procedures by addressing an apparent anomaly whereby BSC parties and Consumer Focus are able to raise CUSC proposals, but not currently put forward WGAs or WG Consultation Alternative Requests.

We note the proposer's intent that Parts iii) to v) will give greater control of meetings to the Chair of that meeting who, being impartial, should ensure that all views are heard. We would also prefer that Working Groups are, as far as possible, open to all interested parties though we recognise that this needs to be balanced against the need to keep the group manageable and of a size which is appropriate for it to deliver its functions. Placing invitations at the discretion of the Chair rather than individual group members may contribute to an appropriate balance being struck.

⁴ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with the section 8 of the CUSC.

⁵ CUSC amendment proposals, amendment reports and representations can be viewed on NGET's website at <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/>

⁶ As set out in Standard Condition C10(1) of NGET's Transmission Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=5327

⁷ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989.

We consider that it is part of any Chair's role to ensure that all participants in a meeting are offered an opportunity to contribute to the discussion. We therefore interpret paragraph 8.17.9 of the CUSC rules, which sets out an observers ability to speak at Working Groups, to relate to specific agenda items such as presentations, oral updates etc, for which meeting time will be set aside, rather than ad hoc comments and discussion. Given that the attendance of these individuals is now at the request of the Chair, it seems appropriate that paragraph 8.17.9 also be amended to refer to the Chair rather than a Working Group member.

We are not aware of any instances where any person, whether an invitee or otherwise, has behaved in a manner which could have led to their ejection from a Working Group meeting. We would hope that professional conduct prevails at all times. However, as the CUSC modification rules do already provide for a Working Group member to be removed where they persistently disrupt or frustrate the work of the group, it seems reasonable that this sanction is also available in respect of observers.

While we are not wholly convinced of the need for Parts iii) to v) of the proposal, they do not appear to be detrimental to the current baseline and should not prevent the implementation of Parts i) and ii). Given the requirement upon National Grid under Standard Condition C10 of its Transmission licence to establish and operate procedures for the modification of the CUSC (including procedures for modification of the modification procedures themselves), we agree that implementation of CAP180 will better facilitate objective a) of the CUSC: *'the efficient discharge by the licensee of the obligations imposed upon it under the Act and by its licence'*.

Although none of the respondents made any comments in respect of objective b): *'facilitating effective competition in the generating and supply of electricity (so far as consistent therewith) facilitation such competition in the sale and purchase of electricity'*, we note the views of some panel members that enabling more parties to get involved in the CUSC amendment processes should better facilitate competition. However, one panel member felt the impact against b) was neutral.

Given that Parts i) and ii) are specific to non-CUSC parties, we are unable to conclude that it would better facilitate competition. We consider that Parts iii) to v) are about effective administration and would not, by themselves, have any impact upon competition. We therefore agree with the panel member who considered this particular proposal to be neutral in respect of objective b).

Decision notice

In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority, hereby directs that amendment proposal CAP180: *"Amendment to the CUSC Governance Process"* be made.

Mark Cox,
Associate Partner, Industry Codes and Licensing

Signed on behalf of the Authority and authorised for that purpose.