



## **WORKING GROUP REPORT**

### **CUSC Amendment Proposal CAP146**

**Responsibilities and liabilities associated with  
Third Party Works and Modifications made by  
Modification Affected Users**

**Prepared by the CAP146 Working Group  
for submission to the Amendments Panel**

Amendment Ref	CAP146
Issue	1.0
Date of Issue	24 <sup>th</sup> April 2007
Prepared by	CAP146 Working Group

**I DOCUMENT CONTROL**  
**a National Grid Document Control**

Version	Date	Author	Change Reference
0.5	05/04/07	A. Diccico	
0.6	10/04/07	A. Diccico	
0.7	13/04/07	A. Diccico	
1.0	24/04/07	A. Diccico	

**b Distribution**

Name	Organisation
The Gas and Electricity Markets Authority	Ofgem
CUSC Parties	Various
Panel Members	Various
National Grid Industry Information Website	

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## 1.0 SUMMARY AND RECOMMENDATIONS

### Executive Summary

- 1.1 CAP146 was proposed by E.ON UK and submitted to the Amendments Panel for consideration on 26<sup>th</sup> January 2007. CAP146 seeks to change the CUSC in respect of two areas where works are required by third parties in order to accommodate infrastructure investment on the transmission system i.e. Third Party Works and Modifications made by Modification Affected Users (as contained in Sections 6.9 and 6.10 of the CUSC). Although slightly different areas of the CUSC, both relate to the same basic issue. After assessment by a Working Group, CAP146 and the four Working Group Amendments are recommended for wider consultation.
- 1.2 Third Party Works are sometimes specified in the Construction Agreements of Users seeking to connect to the transmission system and of those already connected who wish to increase their Transmission Entry Capacity (TEC). These works are required to be carried out on assets owned by parties other than the connecting party and National Grid, before the new connection or increase in TEC can be accommodated. However, the Construction Agreement does not specify who is responsible for organising and paying for these works. National Grid's working practice is to require the connecting party to take responsibility for organising and paying for these works. The proposer's view is that this is an unreasonable interpretation of the terms of the Construction Agreement and believes that National Grid should be responsible for all works required to facilitate changes to the transmission system.
- 1.3 CUSC paragraph 6.10.3 requires a User who requests a Modification to compensate relevant Users for the cost of other Modifications which are deemed necessary as a consequence. Whilst in these circumstances the responsibility for organising and paying for the works is clear, the proposer does not believe that this is a reasonable practice and believes that the CUSC should be changed to state that National Grid should compensate such relevant Users and that these costs should be recovered through TNUoS and/or Connection Charges as appropriate.
- 1.4 The proposer and some members of the Working Group believe that the User should not be responsible for arranging and paying for either category of works described above. Other views within the Working Group were that, whilst National Grid should be responsible for identifying and arranging these works it should not necessarily be responsible for meeting the costs and then recovering them through TNUoS charges. National Grid's view is that the current arrangements are appropriate and the only amendment necessary is the clarification of the process for managing TPW. National Grid considers that the Other User (Triggering Party) should remain responsible for the costs of TPW and Modifications required by a Modification Affected User. National Grid believes that if it is to become responsible for these costs then this will require a re-opening of the Transmission Price Control. If this were not possible, then National Grid would seek to recover these costs through Excluded Services where costs would be charged back directly to the User - it was noted in the Working Group that this would seem to defeat the object of CAP146.

## Working Group Recommendation

- 1.5 The Working Group believes its Terms of Reference have been completed, CAP146 and the four Working Group Amendments have been fully considered and recommends to the CUSC Panel that a Consultation report should proceed to wider Industry Consultation as soon as possible. A majority of the Working Group believed that the original amendment and WGAA A better facilitated the Applicable CUSC Objectives. However, the Working Group was divided as to which of the Original and the four Working Group Amendments best facilitated the Applicable CUSC Objectives. All Alternative Amendments were supported by at least one Working Group member, see table below.

Proposed Amendment	Better than status quo	Not Better than status quo	Best proposed amendment
1. CAP146	4	1	3
2. WGAA-A	5	0	1
3. WGAA-B	1	2	0
4. WGAA-C	2	3	1
5. WGAA-D	4	2	2

## 2.0 PURPOSE AND INTRODUCTION

- 2.1 This Report summarises the deliberations of the Working Group and describes the Original CAP146 Amendment Proposal as well as the Working Group Alternatives.
- 2.2 CAP146 was proposed by E.ON and submitted to the Amendments Panel for their consideration on 26<sup>th</sup> January 2007. The Amendments Panel determined that the proposal should be considered by a Working Group and that the Group should report back to the Panel meeting within 3 months i.e. April 2007 Panel.
- 2.3 The Working Group first met on 19<sup>th</sup> February 2007, and the members accepted the Terms of Reference for CAP146. A copy of the Terms of Reference is provided in Annex 3. The Working Group considered the issues raised by the Amendment Proposal and considered whether the Proposal and the Working Group Alternatives better facilitated the Applicable CUSC Objectives.
- 2.4 This Working Group Report has been prepared in accordance with the Terms of the CUSC. An electronic copy can be found on the National Grid Website, [www.nationalgrid.com/uk/Electricity/Codes/](http://www.nationalgrid.com/uk/Electricity/Codes/), along with the Amendment Proposal Form.

## 3.0 PROPOSED AMENDMENT

- 3.1 CAP146 seeks to change the CUSC in respect of two areas where works are required by third parties in order to accommodate infrastructure investment on the transmission system that is initiated by a party other than National Grid. Although slightly different areas of the CUSC, both relate to the same basic issue:

### a) Third Party Works

Third Party Works are sometimes specified in the Construction Agreements of Users seeking to connect to the transmission system and of those already connected who wish to increase their Transmission Entry Capacity (TEC).

These works are required to be carried out on assets owned by parties other than the connecting party or National Grid, before the new connection or increase in TEC can be accommodated. However, the Construction Agreement does not specify who is responsible for organising and paying for these works. National Grid's working practice is to require the connecting party to do so. Under CAP146, National Grid would be responsible for all works required to facilitate changes to the transmission system and/or accommodate the new Users equipment..

**b) Modifications made by Modification Affected Users**

Section 6.9 and 6.10 of the CUSC contain provisions relating to Modifications (as defined in the CUSC). Paragraph 6.10.3 requires a User who requests a Modification to compensate relevant Users for the cost of other Modifications which are deemed necessary as a consequence. CAP146 would require National Grid and not the User to arrange for the works and compensate such Users, consistent with the proposer's position relating to Third Party Works above.

- 3.2 The proposed amendment anticipated that all Construction Agreements for offers which were outstanding at the time of Authority determination would be re-issued with the new amendments. Annex 4 provides more details on the Original Proposal.

#### **4.0 SUMMARY OF WORKING GROUP DISCUSSIONS**

- 4.1 The first Working Group meeting was held on 19<sup>th</sup> February 2007 where the proposer of CAP146 provided further details and background and explained that the proposed Amendment sought to address two perceived defects:

- a) The CUSC is not explicit as to who is responsible for organising or paying for Third Party Works (TPW) as defined in Construction Agreements.
- b) It is not appropriate for the Other User (Triggering Party) to organise and pay for Modification Affected Users' Modifications (MAUM) as currently required under paragraph 6.10.3 of the CUSC.

The proposer believes that National Grid should be responsible for identifying, arranging and paying for TPW and for MAUM.

#### **Third Party Works under the Construction Agreement**

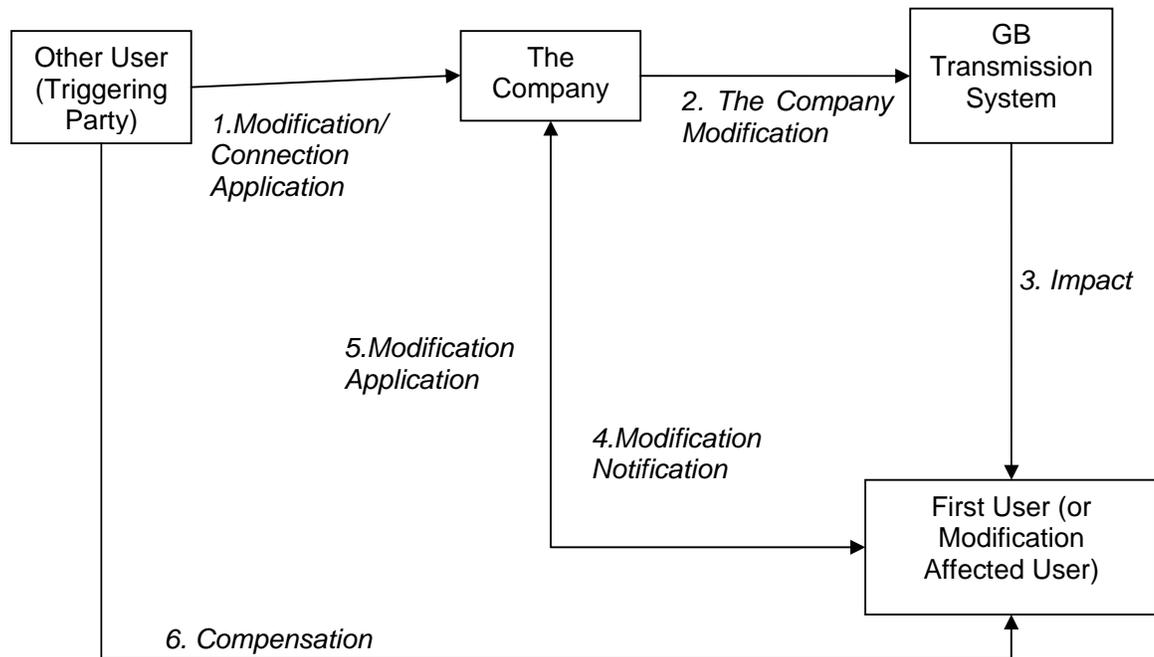
- 4.2 TPW are presently defined in the Construction Agreement as "the works specified in Appendix N" [to the Construction Agreement]. There is no definition of TPW anywhere else in the CUSC. have to be undertaken before the transmission access provided under the Construction Agreement can become effective. However, the Construction Agreement is not specific about who is responsible for arranging and paying for the TPW to be undertaken. The definition of Construction Works, which are those works for which National Grid is specifically responsible under the Construction Agreement, excludes Third Party Works. On this basis National Grid believes that it is up to the connecting User to procure the Third Party Works.
- 4.3 The proposer believes that the definition of User's Works is clear and that TPW cannot form part of these. The definition of User's Works specifies them as "those works necessary for installation of the User's Equipment". As the User's Equipment does not include any part of the Transmission System,

TPW which are required to facilitate reinforcements of the Transmission System cannot be part of the User's Works.

- 4.4 In reality, the User has little option but to arrange and pay for the TPW to be undertaken. If it does not, then the connection or transmission access will not be provided to the User. It is the proposer's opinion that the provisions of the Construction Agreement in relation to TPW need to be made specific so that there is no scope for alternative interpretations.
- 4.5 The proposer believes that it is not appropriate for the connecting User to arrange for the TPW to be undertaken or to pay for them, for a number of reasons:
1. It is not consistent with a shallow connection regime.
  2. It is not consistent with clustering.
  3. It is inconsistent with the one-stop-shop principle of the GBSO being responsible for providing connection offers.
  4. It is not appropriate to potentially expect a new entrant to contract directly with an incumbent competitor in order to gain entry into the market.
  5. It is not clear that the applicant is the most appropriate party to pay for and arrange for the TPW to be carried out.
  6. National Grid is responsible for the connection design. Therefore, it should be responsible for seeing it through. The User, by contrast does not specify the transmission reinforcement associated with its connection and should therefore not be responsible for its implementation.
- 4.6 The first element of the CAP146 proposal aims to provide greater clarity in the Construction Agreements and to ensure that Users are not required to organise or pay for TPWs to be undertaken, by specifying that TPWs are part of National Grid's Construction Works and not part of the User's Works.

#### **Modification Affected Users' Works (MAUM)**

- 4.7 Under sections 6.9 and 6.10 of the CUSC, if a party (the Other User) applies to National Grid for either a new connection or a modification to an existing connection and works are consequentially required on the GB Transmission System, National Grid will have to make a Modification. In these circumstances, National Grid is required to issue to each Affected User a Modification Notification and advise of any works which National Grid believes the Affected User will be required to carry out as a result. If such an Affected User (the First User) believes that it needs to make a Modification as a consequence the Other User requesting the connection/modification is required to pay compensation to the First User to cover the reasonable costs of the Modification under paragraph 6.10.3 of the CUSC. The process is outlined below:



- 4.8 In effect MAUM are a subset of TPW which occur in specific circumstances and where the affected third party is a User under the CUSC. The obligations to organise and pay for MAUM are clearly defined in the CUSC. The proposer however believes that it is inappropriate to require the connecting User to pay for the cost of MAUM, for the same reasons that he believes it is inappropriate for the connecting User to pay for the costs of TPWs under the Construction Agreement. The second element of the CAP146 proposal therefore changes the text of paragraph 6.10.3 of the CUSC to make National Grid is responsible for the costs of all MAUM.
- 4.9 The Working Group debated the scope and definition of TPW and considered National Grid's current internal policy. The Group reviewed the provisions of the Construction Agreement (CONSAG) and how National Grid believes that Appendix N of the CONSAG places an obligation on the connecting User to ensure works are completed whereas the proposer believes that the obligation sits with National Grid. The Group reviewed CUSC 6.10.3 and the ability of an Affected User to obtain cost recovery from the Other User for the reasonable costs of undertaking remedial work to address all the issues triggered by the Other User.
- 4.10 The cost recovery issues relating to the proposed solution were debated by the Group. Views were expressed that, in certain circumstances, costs should fall where they lie depending upon the type of work being undertaken. The proposer stated that a User should only be responsible for User Works and this is consistent with a "one-stop shop" approach and shallow connection charging methodology which is used for all other infrastructure works. The group tried to define TPW and the concept of **Enabling** and **Consequential Works** was introduced. Enabling works were defined as those works required to be undertaken to enable the construction of transmission assets required to provide access to the connecting User. Consequential Works were defined as those works which are required as a consequence of the new User connecting and need to be undertaken before a User can become operational. The group also agreed there are three classes of Affected User: an **External party**, an **Existing Generator** or a **Network Operator**.

4.11 The materiality of TPW currently identified was raised and the National Grid WG member agreed to circulate cost forecast data to the Group, subject to checking confidentiality (see Annex 6). This was discussed at the second Working Group meeting on 26<sup>th</sup> February 2007. The TPW which are currently envisaged for England and Wales are estimated to cost around £84m. The Group explored further which party/parties should be responsible for **Identifying, Completing** and **Paying** for the costs of any TPW and MAUM. As well as the original amendment proposal, two other possible options were considered:

1. **Option X** which splits the works required into Enabling and Consequential;
2. **Option Y** which further splits Enabling and Consequential works into “Sole” and “Shared” User works in an attempt to identify which costs should be borne solely by the connecting party and which shared amongst TNUoS payees.

The following table was developed:

**Key**

NG – National Grid

AU – Affected User

OU – Other User (Triggering Party)

	Third Party Works			Modification Affected User Modification		
<b>Current</b>	<b>ID</b>	<b>Complete</b>	<b>Cost</b>	<b>ID</b>	<b>Complete</b>	<b>Cost</b>
1) NG's view	NG	1) AU/OU	1) OU	AU	AU/NG	OU
2) E.ON's view	AU	2) NG/AU	2) NG			
<b>CAP146</b>	<b>ID</b>	<b>Complete</b>	<b>Cost</b>	<b>ID</b>	<b>Complete</b>	<b>Cost</b>
	NG/AU	NG/AU	NG	AU	NG/AU	NG
<b>OPTION X</b>	<b>ID</b>	<b>Complete</b>	<b>Cost</b>	<b>ID</b>	<b>Complete</b>	<b>Cost</b>
<b>Enabling Works</b>	NG/AU	NG/AU	NG		N/A	
<b>Consequential Works</b>	NG/AU AU		1) OU* 2) NG 3) AU	NG/AU AU		1) OU* 2) NG 3) AU
	* 3 alternatives are possible					
<b>OPTION Y</b>	<b>ID</b>	<b>Complete</b>	<b>Cost</b>	<b>ID</b>	<b>Complete</b>	<b>Cost</b>
<b>Enabling Works Sole use</b>	NG/AU	NG/AU	OU		N/A	
<b>Enabling Works Shared use</b>	NG/AU	NG/AU	NG			

<b>Consequential Works Sole use</b>	NG/AU	NG/AU	OU	NG/AU	NG/AU	OU
<b>Consequential Works Shared use</b>	NG/AU	NG/AU	NG	NG/AU	NG/AU	NG

- 4.12 The Working Group were presented with the proposed legal text for CAP146 from the proposer (see Annex 2) and comments were received from National Grid's Legal Department that it was necessary for TPW to be defined to clarify what type of works are covered. The proposer did not believe that it was necessary for a separate definition of TPWs to be created because under CAP146, TPWs would merely be an internal National Grid concept and would have no bearing on the User's obligations and rights. TPW would be included amongst the defined Construction Works for which National Grid is responsible. All rights and obligations would relate to Construction Works under the Construction Agreement and not to TPWs individually. It was also noted that alternative amendments were likely to be raised for consideration by the Working Group.
- 4.13 The third meeting was held on 12<sup>th</sup> March 2007 and an Alternative Amendment raised by RWE npower was discussed. This is described in more detail in Section 5.0 below but the main features of this alternative are that it is in agreement with CAP146 Original Amendment that the responsibility for organising and carrying out TPW need clarification. However, it differs from the Original amendment in that RWE npower does not believe that the cost of all TPW should be borne by National Grid as opposed to the Other User (Triggering Party), as such treatment would result in increased costs for the population of TNUoS payers who, in general, would receive little or no benefit in terms of enhanced transmission assets. The proposer believed that TPWs are as likely to result in improvements to the Transmission System and therefore Users, as any other works required in order to accommodate new transmission access rights. The only difference is that the works are carried out on assets which are not owned by a Transmission licensee.
- 4.14 A representative from National Grid Legal Department was invited to join the meeting to give the background on clauses 6.9 and 6.10 of the CUSC... CUSC paragraph 6.10.3 is intended to deal with situations where one User has to make modifications to its system at a connection site as a consequence of a change to the transmission system triggered by a new connection or modification by another User. It was designed to reflect the interconnected nature of the various systems with a distinction being made in situations where a User bore its own costs in carrying out consequential work (i.e. where triggered by National Grid alone under 6.9.3) and where it was triggered by a change to the transmission system triggered by another User (6.10.3). This was on the basis that where National Grid was doing something (not triggered by another User) it was carrying out its licensed activities and the Other User was to bear the costs of this on itself with protection afforded by the ability in 6.9.3 to refer the matter to Ofgem. It was

probably expected that the Consequential Works would be self-apparent in nature and something that the First User had to do to continue to meet its own obligations e.g. Grid Code/Licence. Therefore, that User had both the driver and the need to carry out the work and the only contractual obligation was for any new User to meet existing Users' costs, which was delivered through 6.10.3. It is not necessarily the case therefore that TPW and the works envisaged by 6.10.3 are exactly the same thing as they have now evolved to become works one party has to arrange to be delivered which are wider in scope than those Consequential Works at a Connection Site.

4.15 The fourth Working Group meeting was held on 28<sup>th</sup> March 2007 at which National Grid raised another Alternative Amendment. This is described in more detail in Section 5 below but its main feature is that it advocates a process change only for managing TPW together with clarification and codification of National Grid's treatment of TPW within the CUSC and associated agreements. National Grid disagrees with CAP146 in that the Other User (Triggering Party) should remain responsible for the costs of TPW. The proposer of CAP146 opined that this alternative only addressed one of the two defects raised in the Original – this was recognised by National Grid.

4.16 The Group discussed the Transitional/Implementation Arrangements for CAP146 and the two Alternatives. CAP146 anticipated that all construction agreements for offers which were outstanding at the time of Authority determination would be re-issued with the new amendments. For this reason, the Group agreed that implementation would need to be three months from Authority decision in order to give National Grid sufficient time to change the relevant agreements. All Construction Agreements with a Completion Date after the implementation date for CAP146 (should it be accepted by the Authority) would be changed. The proposer of the Original Amendment also stated that CAP146 could also be introduced without changing existing agreements, i.e. only Construction Agreements issued after the implementation date would be considered using the new arrangements. Therefore, implementation would take less time and would be less problematic to achieve. The proposer agreed that an implementation date of one month after an Authority decision would be appropriate. The proposer also agreed with the other Working Group members that because the Original Amendment stated that **all** active Construction Agreements (CONSAGs) would be changed on implementation, then a change to include only those CONSAGs issued after the date of the Authority decision would constitute a new Alternative Amendment (WGAA A). The proposer of the RWE npower Alternative stated that this mirrored the Original and WGAA A in that it could be applied to all existing Construction Agreements or only to those issued after implementation, and hence could be considered as two Amendments (WGAA B and WGAA C). The National Grid Amendment proposes only a process change and hence would only require a one month implementation period. Consequently, the Working Group has agreed that the Original and four WG Alternative Amendments should be considered as follows:

- i) **CAP146 Original** – to include all active CONSAGs with a Completion Date occurring after the implementation date – 3 months implementation
- ii) **WGAA A** – as CAP146 Original but only CONSAGs issued after the implementation date would be under the new arrangements – 1 month implementation
- iii) **WGAA B** – the Alternative Amendment proposed by RWE npower – to include all active CONSAGs with a Completion Date occurring after the implementation date – 3 months implementation

- iv) **WGAA C** – as WGAA B but only CONSAGs issued after the implementation date would be under the new arrangements – 1 month implementation
- v) **WGAA D** - the Alternative Amendment proposed by National Grid - to include all active CONSAGs – 1 month implementation.

4.17 It should be noted that there will be a requirement to amend the STC to reflect the consequences of CAP146 (see section 9 below). It will take 4-6 months to develop and provide proposed STC amendments to the Authority for their consideration.

## 5.0 WORKING GROUP ALTERNATIVE AMENDMENTS

5.1 The first **Alternative Amendment was proposed by RWE npower (see Annex 5) WGAA B**. CAP 146 identifies the CUSC Defects that the Proposed Amendment seeks to address as being:

- i. the lack of clarity regarding who is responsible for organising and carrying out Third Party Works; and
- ii. the compensation arrangements relating to “Modification Affected Users”

The Alternative is consistent with CAP146 in that it agrees that clarification of the above areas would benefit the CUSC, with consistency of treatment between Users and National Grid. The main difference from CAP146 is in this Alternative the cost of all TPW should not necessarily be borne by National Grid as opposed to the party triggering these works. This solution would result in increased costs for the population of TNUoS payers who would, in general, receive little or no benefit in terms of enhanced transmission assets.

5.2 Under the CUSC, if a party (the Other User) applies to National Grid for either a new connection or a modification to an existing connection, the required works may include works on the GB Transmission System and also assets owned by another User (the First User) (Paragraph 6.9.3). In this case, the party requesting the connection/modification may have to pay compensation to the First User (Paragraph 6.10.3). Currently, no provision is made for compensation to the First User if it is required to modify its assets arising from modification works to the GB Transmission System if a specific User has not been identified as being responsible for necessitating these works. It would appear to be both inconsistent and unreasonable for the First User to be denied compensation in the event that another User is not specifically identified or associated with a Modification to the GB Transmission System, for example where the works are carried out for the benefit of several Users, or works to optimise the GB Transmission System by increasing the Connection Point/local GB Transmission System voltage. **It is proposed that the compensation provisions in favour of the First User should include compensation to be paid by National Grid where an Other User has not been identified.**

5.3 In addition, Paragraph 6.10.3 is not specific in describing the extent of the works carried out by the First User which the Other User would be liable for. For example, the extent of these works may include betterment of plant and apparatus operating at several voltage levels below that of the Connection Point, potentially exposing the Other User to inappropriate liabilities. **It is proposed that Paragraph 6.10 3 be clarified that compensation to the**

**First User is limited to the costs of works to Plant and Apparatus operating at the Connection Point voltage only.**

- 5.4 **It is also proposed to define TPW within the CUSC.** TPW are currently defined in the Construction Agreement as being those works specified in Appendix N. The proposer argues that this definition provides no guidance to Users regarding the need for these works, their obligation to carry out the works, and Users' liability for their cost. The CONSAG prohibits the User's Equipment being energised at the Connection Site if the TPW have not been completed. However, the current arrangements appear to place all responsibility on the Other User to ensure that such works are carried out and effectively bypass the provisions of Paragraphs 6.9.3 and 6.10.3. **It is proposed that, where TPW are to be carried out by party to the CUSC, the provisions of Paragraphs 6.9.3 and 6.10.3 would apply.** This would ensure that the treatment of CUSC parties, with respect to their obligations to carry out and pay for Third Party Works, would be consistent with the CUSC.
- 5.5 The second **Alternative Amendment was proposed by National Grid. WGAA D** National Grid's view is that the current arrangements are appropriate and that all that is necessary is to amend the process for managing TPW together with greater clarity. National Grid considers that the Other User (Triggering Party) should remain responsible for the costs of TPW. National Grid expressed the view that the Proposer's Amendment Proposal raises a number of concerns with the current process, including:
- i) It is inappropriate to potentially expect a new entrant to contract directly with an incumbent competitor in order to gain entry to the market;
  - ii) National Grid cannot identify the most economic and efficient overall solution to connect a new generator if it does not see of all the relevant costs;
  - iii) National Grid should be responsible for the delivery of all works required to provide a connection to ensure the programme is optimised;
  - iv) National Grid lacks control and influence over the programming of TPW which ultimately leads to an impact on our ability to deliver transmission works;
  - v) National Grid's approach to TPW is inconsistent with a shallow connection charging regime and a "one stop shop" for User.
- 5.6 CAP146 seeks to address these concerns by making National Grid responsible for the identification, delivery, and cost of all TPW. National Grid considered that there were a number of flaws behind the proposer's proposal – these are set out in detail in Annex 5B, paragraph 3). In summary, if Ofgem were to accept this Amendment Proposal, National Grid would face additional contractual responsibilities, would be exposed to additional risks, and would also be exposed to additional costs which are not included in its Price Control. On these grounds National Grid cannot support CAP146.
- 5.7 On the cost recovery issue, National Grid stated that the provision of TPW is not a service which it currently carries out, and as such, the associated costs are not included in its Price Control. If National Grid became responsible for TPW costs then it stated that these costs should be treated as an Excluded Service. In order to demonstrate that this service is economic and efficient, National Grid would seek to charge the costs to the Triggering User. This treatment:

- would be consistent with the treatment of line diversions in both the transmission and distribution licences;
- gives Ofgem comfort that the costs are efficiently incurred, since there is a User willing to pay;
- allows the Users to contract directly with the Third Party if they believe they can negotiate a better price.

5.8 The National Grid Alternative Amendment (WGAA D) proposed was a process only change which would clarify National Grid's treatment of TPW within the CUSC and associated agreements. The principal features would be as follows:

- i) The requirement or potential for TPW would be identified by National Grid at the stage of developing the connection Offer
- ii) The timetable for resolving any TPW would also be identified
- iii) The Triggering User would be responsible for procurement, delivery of the works, the risk of non-delivery, and the associated costs (i.e. no change)
- iv) The CUSC provides a process (Modification Notification) to manage changes on National Grid's and Users' systems that may have an impact on other Users. Once the Triggering User had signed their Connection Offer, National Grid would use this process to advise all potentially affected Users that a change to the transmission system has potential to affect them
- v) Once any affected Users had identified any TPW National Grid would notify the Triggering User setting out the details of the TPW and associated timing
- vi) The CUSC provides a route for an affected User to be compensated by a Triggering User where the works are triggered by the construction of a new connection site. This will not preclude a User from entering into a commercial deal outside of the CUSC.

## **6.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES**

6.1 The Working Group assessed the Original Proposal and the four Working Group Alternatives against the Applicable CUSC Objectives which are:

- (a) the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence; and
- (b) facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.

6.2 The assessment made by the Working Group is summarised below.

1. **CAP146 Original proposal:** include all active CONSAGs with a Completion Date occurring after the implementation date – 3 months implementation

**Efficient discharge of licence obligations / Efficient & Economic**

<b>Promotes</b>	<b>Demotes</b>
<ul style="list-style-type: none"> <li>• National Grid is able to see whole cost of its specific design choices, so is better able to make a decision as to the most economically efficient solution over all.</li> <li>• All costs being allocated to NGET fits with shallow charging approach and so avoids the likelihood of inefficient investment*</li> <li>• The most appropriate party, National Grid, is required to arrange for TPWs to be undertaken.</li> <li>• Removes cause of disputes in relevant Construction Agreements by clarifying responsibilities in respect of TPWs.</li> </ul>	<ul style="list-style-type: none"> <li>• Requirement to open up all existing construction agreements may be administratively cumbersome.</li> <li>• National Grid would face additional contractual responsibilities and would be exposed to additional risks and costs which are not included in its Price Control.</li> </ul>

**Facilitates Competition**

<b>Facilitates</b>	<b>Frustrates</b>
<ul style="list-style-type: none"> <li>• The removal of randomly generated deep connection costs on participants, within what is otherwise a shallow connection regime, removes an unnecessary risk for new entrants and thus removes a barrier to entry.</li> <li>• Removes a current cause of discrimination where new entrants who have no TPWs as part of their related construction works have the cost of these works socialised under the shallow charging policy, whereas those whose works include TPWs have to pay for them up front and in full.</li> <li>• Removes a requirement for new entrants to negotiate directly with incumbent competitors to facilitate their entry onto the system.</li> </ul>	<ul style="list-style-type: none"> <li>• All Users have to pick up the costs associated with TPWs, including demand consumers – it is difficult to justify that TPWs are assets that benefit the system for all Users.</li> </ul>

2. **WGAA – A:** as CAP146 Original but only CONSAGs issued after the implementation date would be under the new arrangements – 1 month implementation

**Efficient discharge of licence obligations / Efficient & Economic**

Promotes	Demotes
<ul style="list-style-type: none"> <li>• National Grid is able to see whole cost of its specific design choices, so is better able to make a decision as to the most economically efficient solution over all.</li> <li>• All costs being allocated to NGET fits with shallow charging approach and so avoids the likelihood of inefficient investment*</li> <li>• The most appropriate party, National Grid, is required to arrange for TPW to be undertaken.</li> <li>• Removes cause of disputes in relevant Construction Agreements by clarifying responsibilities in respect of TPW.</li> </ul>	<ul style="list-style-type: none"> <li>• National Grid would face additional contractual responsibilities and would be exposed to additional risks and costs which are not included in its Price Control.</li> <li>• Treating different Users' TPWs depending on when CONSAGs were signed could be inefficient.</li> </ul>

**Facilitates Competition**

Facilitates	Frustrates
<ul style="list-style-type: none"> <li>• The removal of randomly generated deep connection costs on participants, within what is otherwise a shallow connection regime, removes an unnecessary risk for new entrants and thus removes a barrier to entry.</li> <li>• Removes a current cause of discrimination where new entrants who have no TPWs as part of their related construction works have the cost of these works socialised under the shallow charging policy, whereas those whose works include TPWs have to pay for them up front and in full.</li> <li>• Removes a requirement for new entrants to negotiate directly with incumbent competitors to facilitate their entry onto the system.</li> </ul>	<ul style="list-style-type: none"> <li>• All Users have to pick up the costs associated with TPWs, including demand consumers – it is difficult to justify that TPWs are assets that benefit the system for all Users.</li> </ul>

**3. WGAA – B:** the Alternative Amendment proposed by RWE npower – to include all active CONSAGs with a Completion Date occurring after the implementation date – 3 months implementation

**Efficient discharge of licence obligations / Efficient & Economic**

Promotes	Demotes
<ul style="list-style-type: none"> <li>• Removes cause of disputes in relevant Construction Agreements by clarifying responsibilities in respect of TPW.</li> <li>• Tries to identify which TPW are for sole use of Triggering User and therefore avoids all Users (including demand consumers) having to pick up these costs where this little or no benefit for these Users.</li> <li>• Proposes that compensation provisions in favour of the First User should include compensation to be paid by National Grid where an Other User (Triggering Party) has not been identified.</li> </ul>	<ul style="list-style-type: none"> <li>• Formalises National Grid's working assumption that it is the new entrant's responsibility to arrange and pay for TPWs to be undertaken. Present legal requirements are debatable, but this would formalise arrangements which require the User to arrange such works even though it is not the best party to do so.</li> <li>• Requirement to open up all existing construction agreements may be administratively cumbersome.</li> </ul>

**Facilitates Competition**

Facilitates	Frustrates
<ul style="list-style-type: none"> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Formalises National Grid's working assumption that it is the new entrant's responsibility to arrange and pay for TPWs to be undertaken. Present legal requirements are debatable, but this would formalise arrangements which would constitute a barrier to entry.</li> </ul>

**4. WGAA – C:** as WGAA B but only CONSAGs issued after the implementation date would be under the new arrangements – 1 month implementation

**Efficient discharge of licence obligations / Efficient & Economic**

Promotes	Demotes
<ul style="list-style-type: none"> <li>• Removes cause of disputes in relevant Construction Agreements by clarifying responsibilities in respect of TPW.</li> <li>• Tries to identify which TPW are for sole use of Triggering User and therefore avoids all Users (including demand consumers) having to pick</li> </ul>	<ul style="list-style-type: none"> <li>• Formalises National Grid's working assumption that it is the new entrant's responsibility to arrange and pay for TPWs to be undertaken. Present legal requirements are debatable, but this would formalise arrangements which require the User to arrange such works even though it is not the best party to do</li> </ul>

<p>up these costs where this little or no benefit for these Users.</p> <ul style="list-style-type: none"> <li>Proposes that compensation provisions in favour of the First User should include compensation to be paid by National Grid where an Other User (Triggering Party) has not been identified.</li> </ul>	<p>so.</p>
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**Facilitates Competition**

Facilitates	Frustrates
<ul style="list-style-type: none"> <li></li> </ul>	<ul style="list-style-type: none"> <li>Formalises National Grid's working assumption that it is the new entrant's responsibility to arrange and pay for TPWs to be undertaken. Present legal requirements are debatable, but this would formalise arrangements which would constitute a barrier to entry.</li> </ul>

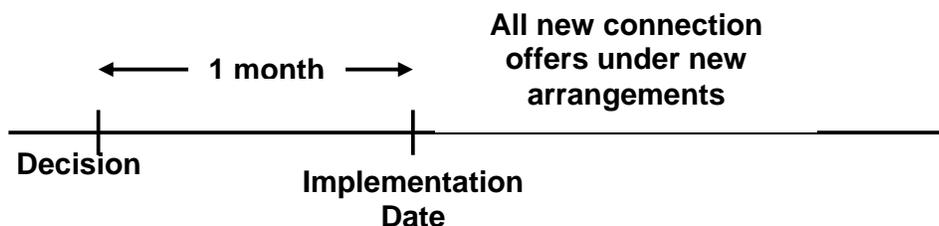
**5. WGAA – D:** the Alternative Amendment proposed by National Grid - to include all active CONSAGs – 1 month implementation

**Efficient discharge of licence obligations / Efficient & Economic**

Promotes	Demotes
<ul style="list-style-type: none"> <li>Clarifies the process for the management of TPWs and MAUMs, such that NGET can manage the process effectively on behalf of Triggering Party.</li> </ul>	<ul style="list-style-type: none"> <li>Formalises National Grid's working assumption that it is the new entrant's responsibility to arrange and pay for TPWs to be undertaken. Present legal requirements are debatable, but this would formalise arrangements which require the User to arrange such works even though it is not the best party to do so.</li> <li>Does not remove the perverse incentive for a User to terminate a project if it has TPWs when the actual transmission costs are (by comparison) low. All TPWs costs allocated to Triggering User does not fit with shallow charging approach and may lead to inefficient investment.</li> </ul>



**One month WGAA A, C and D:**



**8.0 IMPACT ON THE CUSC**

- 8.1 CAP146 and WGAA-A would require amendments to Sections 1.3.4 and 6.10.3 of the CUSC and the Standard form of the Construction Agreement contained in (Schedule 2 Exhibit 3). The text required to give effect to the Original Proposal is contained as Part A of Annex 2 of this document.
- 8.2 WGAA-B and WGAA-C would require amendments to Section 6.10.3 of the CUSC, the Standard form of the Construction Agreement contained in (Schedule 2 Exhibit 3 and also Section 11 to add a new CUSC definition for Third Party Works and Connection Point. The text to give effect to WGAA-B and WGAA-C is attached as Part B of Annex 2 of this document.
- 8.3 WGAA-D would require amendments to the Standard form of the Construction Agreement contained in (Schedule 2 Exhibit 3 and also Section 11 to add a new CUSC definition for Third Party Works The text to give effect to WGAA-D is attached as Part C of Annex 2 of this document.

**9.0 IMPACT ON INDUSTRY DOCUMENTS**

**Impact on Core Industry Documents**

- 9.1 CAP146 is likely to have an impact upon the SO-TO Code. The STC Committee have been informed of the potential consequential impact on the STC in the event of CAP146 Amendment Proposal being approved by the Authority and subsequently implemented within the CUSC. The STC Committee are currently reviewing the impact of CAP146 on the STC to identify the consequential changes required to back off CAP146 provisions within the STC. Any associated STC changes will be proposed and progressed in line with the STC Amendment Proposal process in accordance with Section B, paragraph 7.2.

**Impact on other Industry Documents**

- 9.2 CAP146, WGAA-A, WGAA-B and WGAA-C would have a consequential impact on National Grid's Charging Methodologies due to the obligations that would be placed on National Grid to arrange payment for TPW and some system modifications. This may also have an impact on National Grid's Transmission Price Control which may have to be re-opened.

## ANNEX 1 – GLOSSARY AND ACRONYMS

<b>Enabling Works</b>	Those works required to be undertaken to enable the construction of transmission assets required to provide access to the connecting User.
<b>Consequential Works</b>	Those works which are required as a consequence of the new User connecting and which need to be undertaken before a User can become operational.
<b>First User/Modification Affected User</b>	A User which is required to carry out works due to a modification/connection application by an Other User (Triggering Party)
<b>Modification Affected User Modification (MAUM)</b>	Paragraph 6.10.3 of the CUSC requires a User who requests a Modification to compensate relevant Users for the cost of other Modifications which are deemed necessary as a consequence.
<b>Other User/Triggering Party</b>	The User which has applied for a Modification/Connection
<b>Third Party Works (TPW)</b>	The works required on a Third Party's plant or apparatus in order for a Modification/Connection to take place.
<b>Users' Works</b>	Those works necessary for installation of the User's Equipment

## ANNEX 2 – PROPOSED LEGAL TEXT TO MODIFY THE CUSC

### Part A - Text to give effect to the Original Proposed Amendment and Working Group Alternative Amendment A

The proposed Legal text to modify the CUSC is detailed below by inserting the coloured underlined text and deleting the coloured struck through text.

#### Standard form of the Construction Agreement contained in (Schedule 2 Exhibit 3

“Construction Works” the **Transmission Connection Asset Works, Transmission Reinforcement Works, Seven Year Statement Works and One Off Works** and such additional works as are required in order to comply with any relevant **Consents** relating to any such works, including but excluding for the avoidance of doubt any **Third Party Works**

“User’s Works” those works necessary for installation of the **User’s Equipment** which are specified in Appendix I to this **Construction Agreement**, but excluding for the avoidance of doubt any Third Party Works

#### Section 6 – General Provisions

6.10.3 **The Company** shall have no obligation to compensate any **User** ~~(the “First User”)~~ for the reasonable and proper cost or expense of any **Modification** required to be made by any that User as a result of any **The Company Modification** under Paragraph 6.9.3.1. Where such ~~The Company Modification~~ is made as a result of the construction of a **New Connection Site** or a **Modification** for another **User** (the “**Other User**”), the **Other User** shall compensate the **First User** for the reasonable and proper cost and expense of any ~~Modifications~~ required to be made by the **First User** as a result of that ~~The Company Modification~~. Such compensation shall be paid to the **First User** by ~~the The Company Other User~~ The Company the Other User within thirty days of production to The Company the Other User of a receipted invoice (together with a detailed breakdown of such reasonable costs and expenses) for the expenditure which has been incurred by the **First User**.

## **Section 1 – Applicability of sections and related agreements structure**

### 1.3.4 General Provisions

- a) **Bilateral Agreements** and **Construction Agreements** which are entered into between **The Company** and **Users** shall be in or substantially in the relevant exhibited form of **Bilateral Agreement** and/or **Construction Agreement** unless the parties thereto agree otherwise.
  
- b) Each and every **Bilateral Agreement, Mandatory Services Agreement** and **Construction Agreement** entered into by a **User** and in force from time to time shall constitute a separate agreement governed by the terms of the **CUSC** and will be read and construed accordingly. For the avoidance of doubt no **User** shall enjoy any rights nor incur any obligations against any **User party other than The Company** pursuant to the terms of any **Bilateral Agreement, Mandatory Services Agreement** or **Construction Agreement**.

## Part B - Text to give effect to the Working Group Alternative Amendment B and C

The proposed Legal text to modify the CUSC is detailed below by inserting the coloured underlined text and deleting the coloured struck through text.

### Section 6 – General Provisions

CUSC 6.10.3 ~~The Company shall have no obligation to compensate any User (the "First User") for the cost or expense of any Modification required to be made by any User as a result of any The Company Modification under Paragraph 6.9.3.1.~~ Where ~~such The Company a~~ Modification is made by a User (the "First User") as a result of a The Company Modification under Paragraph 6.9.3.1 made as a result of the construction of a **New Connection Site** or a **Modification** for another **User** (the "**Other User**") or for The Company, the **Other User** or The Company as applicable shall compensate the **First User** for the reasonable and proper cost and expense of any such Modifications required to be made by the First User to Plant and/or Apparatus directly connected to the Connection Point as a result of that **The Company Modification**. Such compensation shall be paid to the **First User** by the **Other User** or The Company within thirty days of production to the **Other User** of a receipted invoice (together with a detailed breakdown of such reasonable costs and expenses) for the expenditure which has been incurred by the **First User**.

### Section 11 – Interpretations and definitions

New CUSC Definition

<b>"Connection Point"</b>	as defined in the <b>Grid Code</b>
<b>"Third Party Works"</b>	The works to <b>Plant</b> and/or <b>Apparatus</b> which is not owned or operated by either <b>The Company</b> or the <b>User</b> (the " <b>Other User</b> ") and is specified in Appendix N of the <b>Other User's Construction Agreement</b> .

### Standard form of the Construction Agreement contained in (Schedule 2 Exhibit 3

Add the following as clause 2.x

#### 2.x Third Party Works

2.x.1 The Other User is responsible for ensuring that all such works to Plant and/or Apparatus which is not owned or operated by another User (the "First User") are completed prior to the Completion Date. In the case of Third Party Works to be carried out by the First User, The Company shall submit to the First User a Modification Notification under Paragraph 6.9.3 and any compensation payable to the First User by the Other User or The Company as appropriate shall be in accordance with Paragraph 6.10.3.

## **Part C - Text to give effect to the Working Group Alternative Amendment D**

### **NOTES**

The introduction of a definition of “third party works” in the CUSC identifies in general term the nature of these works against which principal those third party works relevant to a specific project would be set out in Appendix N to that Construction Agreement.

Have introduced new clauses into Clause 2 specifically relating to “third party works” as follows rather than categorising them as part of the user’s works. These clauses:

- a) specifically provide that the User is responsible for getting these works done and provide for the User to confirm that they have been completed. In cases where the works are such that they need to be completed before National Grid can undertake its own works this should be self evident but where works are consequential National Grid needs the right to have confirmation from the third parties that they are completed in order to be able to issue the operational notification under Clause 7 of the Construction Agreement.
- b) the construction programme will set out the date by which National Grid need the third party works to be completed. Depending on the nature of the works this could be at a time to enable National Grid itself to do something or, where it’s a prerequisite to the issue of the operational notification, be the Completion Date.
- c) recognises that its possible that the exact nature of the Third Party Works will not be known at the time of an offer particularly where the works have to be identified by another user following the modification notice process under CUSC Paragraph 6.9, and provides for National Grid to confirm these by a specified date and places an obligation on National Grid to follow the modification notification process.
- d) provide for revision of construction programme, construction works or termination in the event of delay or failure to deliver (in similar way as with delay/failure of users works)

The proposed Legal text to modify the CUSC is detailed below by inserting the coloured underlined text

## **Section 11 – Interpretations and definitions**

### **“Third Party Works”**

**in relation to a particular User those works, defined as such in its Construction Agreement; being works undertaken on assets belonging to someone other than The Company or the User where such works are required by The Company to enable it to provide the connection to and/or use of the GB Transmission System by the User or required as a consequence of connection to and/or use of the GB Transmission System by the User;**

## **Standard form of the Construction Agreement contained in (Schedule 2 Exhibit**

**3**

Amend the definition of Third Party Works in Clause 1 as follows:

### **“Third Party Works”**

**the works to be undertaken on assets belonging to a party other than The Company and the User to enable it to provide or as a consequence of the connection to and/or use of the GB Transmission System by the User as specified in Appendix N;**

Add the following as clause 2.x

### **2.x Third Party Works**

**2.x.1 The User shall be responsible for carrying out or procuring that the Third Party Works are carried out and shall carry them out or procure that they are carried out in accordance with the timescales specified in the Construction Programme. The User shall confirm to The Company or, where requested to do so by The Company, provide confirmation from the third party that the Third Party Works have been completed.**

**2.x.2 Given the nature of these works it may not be possible to fully identify the works required or the third parties they relate to at the date hereof. Where this is the case The Company shall, subject to 2.x.3 below, advise the User as soon as practicable and in any event by [ ] of the Third Party Works and shall be entitled to revise Appendix N and as a consequence the Construction Programme as necessary to reflect this.**

**2.x.3 Where Third Party Works are likely to be Modifications required to be made by another user(s) (“the “First User(s)”) as a consequence of Modifications to the GB Transmission System to be undertaken by The Company under this Construction Agreement The Company shall as soon as practicable after the date hereof issue the notification to such First User’s in accordance with CUSC Paragraph 6.9.3.1. The User should note its**

obligations under **CUSC** Paragraph 6.10.3 in respect of the costs of any **Modifications** required by the **First User(s)**.

2.x.4 In the event that the **Third Party Works** have not been completed by the date specified in the **Construction Programme** or, in **The Company's** reasonable opinion are unlikely to be completed by such date, **The Company** shall be entitled to revise the **Construction Programme** as necessary to reflect such delay and also, where **The Company** considers it necessary to do so, shall be entitled to revise the **Construction Works** (and as a consequence Appendices A and B to the **Bilateral Connection Agreement**). For the avoidance of doubt such revisions shall be at **The Company's** absolute discretion and the consent of the **User** is not required. Further, in the event that the **Third Party Works** have not been completed by [ ] **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and in this event the provisions of Clause 11 of this **Construction Agreement** shall apply.

## **ANNEX 3 – WORKING GROUP TERMS OF REFERENCE AND MEMBERSHIP**

### **Working Group Terms of Reference and Membership**

#### **TERMS OF REFERENCE FOR CAP146 WORKING GROUP**

#### **RESPONSIBILITIES**

1. The Working Group is responsible for assisting the CUSC Amendments Panel in the evaluation of CUSC Amendment Proposal CAP146 tabled by E.ON UK plc at the Amendments Panel meeting on 26 January 2007.
2. The proposal must be evaluated to consider whether it better facilitates achievement of the applicable CUSC objectives. These can be summarised as follows:
  - (a) the efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence; and
  - (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.
3. It should be noted that additional provisions apply where it is proposed to modify the CUSC amendment provisions, and generally reference should be made to the Transmission Licence for the full definition of the term.

#### **SCOPE OF WORK**

4. The Working Group must consider the issues raised by the Amendment Proposal and consider if the proposal identified better facilitates achievement of the Applicable CUSC Objectives.
5. In addition to the overriding requirement of paragraph 4, the Working Group shall consider and report on the following specific issues:
  - The definition of Third Party Works: what does/should TPW cover?
  - The size and scope of the problem: how many of the current proposed generation projects may be liable for TPW - what is the total financial impact?
  - What effect does clustering have on individual project TPW costs?
  - How are/should TPW costs (be) recovered? Is this a CUSC or a charging statement issue?
  - How should the original/alternatives be implemented and how will the transition period be managed?
6. The Working Group is responsible for the formulation and evaluation of any Working Group Alternative Amendments (WGAAs) arising from Group discussions which would, as compared with the Amendment Proposal, better facilitate achieving the applicable CUSC objectives in relation to the issue or defect identified.

7. The Working Group should become conversant with the definition of Working Group Alternative Amendments which appears in Section 11 (Interpretation and Definitions) of the CUSC. The definition entitles the Group and/or an individual Member of the Working Group to put forward a Working Group Alternative Amendment if the Member(s) genuinely believes the Alternative would better facilitate the achievement of the Applicable CUSC Objectives. The extent of the support for the Amendment Proposal or any Working Group Alternative Amendment arising from the Working Group's discussions should be clearly described in the final Working Group Report to the CUSC Amendments Panel.
  
8. The Working Group is to submit their final report to the CUSC Panel Secretary on 19<sup>th</sup> April 2007 for circulation to Panel Members. The conclusions will be presented to the CUSC Panel meeting on 27<sup>th</sup> April 2007.

#### MEMBERSHIP

9. It is recommended that the Working Group has the following members:

Chair	Tony Diccio
National Grid	Emma Carr
	Andy Balkwill
Industry Representatives	Alan Creighton
	John Morris
	Simon Lord
	Robert Longden
	Kirsten Elliott-Smith
	Paul Jones
	David Scott
	John Norbury
	STC Member (TBC)
	Mark Manley
Authority Representative	Mark Copley
Technical Secretary	Bali Virk

10. The membership can be amended from time to time by the CUSC Amendments Panel.

#### RELATIONSHIP WITH AMENDMENTS PANEL

11. The Working Group shall seek the views of the Amendments Panel before taking on any significant amount of work. In this event the Working Group Chairman should contact the CUSC Panel Secretary.
  
12. Where the Working Group requires instruction, clarification or guidance from the Amendments Panel, particularly in relation to their Scope of Work, the Working Group Chairman should contact the CUSC Panel Secretary.

## **MEETINGS**

13. The Working Group shall, unless determined otherwise by the Amendments Panel, develop and adopt its own internal working procedures and provide a copy to the Panel Secretary for each of its Amendment Proposals.

## **REPORTING**

14. The Working Group Chairman shall prepare a final report to the April 2007 Panel, Amendments Panel responding to the matter set out in the Terms of Reference.
15. A draft Working Group Report must be circulated to Working Group members with not less than five business days given for comments.
16. Any unresolved comments within the Working Group must be reflected in the final Working Group Report.
17. The Chairman (or another member nominated by him) will present the Working Group report to the Amendments Panel as required.

## ANNEX 4 – AMENDMENT PROPOSAL FORM

<b>CUSC Amendment Proposal Form</b>	<b>CAP:146</b>
<p>Title of Amendment Proposal:</p>	
<p>Responsibilities and liabilities associated with Third Party Works and Modifications made by Modification Affected Users</p>	
<p>Description of the Proposed Amendment (<b>mandatory by proposer</b>):</p> <p>The CUSC to be amended to:</p> <ol style="list-style-type: none"><li>1. Clarify that National Grid is responsible for arranging and paying for all Third Party Works listed in Appendix N of all relevant Construction Agreements.</li><li>2. Change the provisions in Section 6 of the CUSC relating to Modifications made by Modification Affected Users so that National Grid is responsible for paying the costs of all such Modifications.</li></ol>	
<p>Description of Issue or Defect that Proposed Amendment seeks to Address (<b>mandatory by proposer</b>):</p> <p>The amendment seeks to change the CUSC in respect of two areas where works are required by third parties in order to accommodate infrastructure investment on the transmission system. Although slightly different areas of the CUSC, both relate to the same basic issue.</p> <ol style="list-style-type: none"><li>1. Third Party Works</li></ol> <p>Third Party Works are sometimes specified in the Construction Agreements of Users seeking to connect to the transmission system and of those already connected who wish to increase their Transmission Entry Capacity (TEC). These works are required to be carried out on assets owned by parties other than the connecting party and National Grid, before the new connection or increase in TEC can be accommodated. However, the Construction Agreement does not specify who is responsible for organising and paying for these works. National Grid's working practice is to require the connecting party to do so. E.ON does not believe that this is a reasonable practice and believes that National Grid should be responsible for all works required to facilitate changes to the transmission system.</p> <ol style="list-style-type: none"><li>2. Modifications made by Modification Affected Users</li></ol> <p>Section 6.9 and 6.10 of the CUSC contain provisions relating to Modifications (as defined in the CUSC). Paragraph 6.10.3 requires a User who requests a Modification to compensate relevant Users for the cost of other Modifications which are deemed necessary as a consequence. Again, E.ON does not believe that this is a reasonable practice and that National Grid should compensate such Users, consistent with our position relating to Third Party Works above.</p> <p>We believe that the User should not be responsible for arranging and paying for either category of works described above as:</p>	

- a) It is not consistent with a shallow connection regime.
- b) It is not consistent with clustering.
- c) It is inconsistent with the one-stop-shop principle of the GBSO being responsible for providing connection offers.
- d) It is not appropriate to potentially expect a new entrant to contract directly with an incumbent competitor in order to gain entry into the market.
- e) It is not clear that the applicant is the most appropriate party to carry out this work.
- f) National Grid is responsible for the connection design. Therefore, it should be responsible for seeing it through. The User, by contrast does not specify the transmission reinforcement associated with its connection and should therefore not be responsible for its implementation.

**Impact on the CUSC** (*this should be given where possible*):

**We would expect at least the following changes:**

1. **A change to the definition of User's works to clarify that they do not include Third Party Works.**
2. **A change to the definition of Construction Works to include Third Party Works.**
3. **A change to 6.10.3 to clarify that National Grid should be responsible for paying for Modifications triggered by other Modifications.**
4. **It may be necessary to include a clause in the main text of the CUSC to clarify that National Grid is responsible for arranging and paying for any Third Party Works to be carried out and that these responsibilities cannot be imposed on Users through their bilateral agreements.**

**Impact on Core Industry Documentation** (*this should be given where possible*):

**None expected.**

**Impact on Computer Systems and Processes used by CUSC Parties** (*this should be given where possible*):

Existing Construction Agreements containing such clauses would be reissued with the new amendments.

**Details of any Related Modifications to Other Industry Codes** (*where known*):

None expected.

**Justification for Proposed Amendment with Reference to Applicable CUSC Objectives\*\*** (*mandatory by proposer*):

The present access regime operates under a mainly shallow connection policy. However, some applicants are randomly subjected to deep responsibilities and liabilities under the present arrangements, which we do not believe are consistent with a shallow, clustered approach and which are unnecessary and inappropriate. These act as a barrier to competition in generation. Therefore their removal will benefit objective b), facilitating effective competition in the generation and supply of electricity.

Furthermore, clarifying the responsibilities associated with Third Party Works will remove an

unnecessary complication in the current connection and use of system arrangements, which will benefit applicable objective a), the efficient discharge by National Grid of the obligations imposed on it by the Act and the Transmission Licence.

<b>Details of Proposer:</b> Organisation's Name:	Paul Jones E.ON UK plc
Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or "energywatch")	CUSC Party
<b>Details of Proposer's Representative:</b> Name: Organisation: Telephone Number: Email Address:	Paul Jones E.ON UK plc 02476 183 838 paul.jones@eon-uk.com
<b>Details of Representative's Alternate:</b> Name: Organisation: Telephone Number: Email Address:	Ben Sheehy E.ON UK plc 02476 183 381 ben.sheehy@eon-uk.com
<b>Attachments:</b>  <b>Title and No. of pages of each Attachment:</b>	

## ANNEX 5 – ALTERNATIVE AMENDMENTS

### RWE npower Alternative Amendment – WGAA B and C

#### CAP146 WORKING GROUP – RWE ALTERNATIVE AMENDMENT PROPOSAL

##### Description

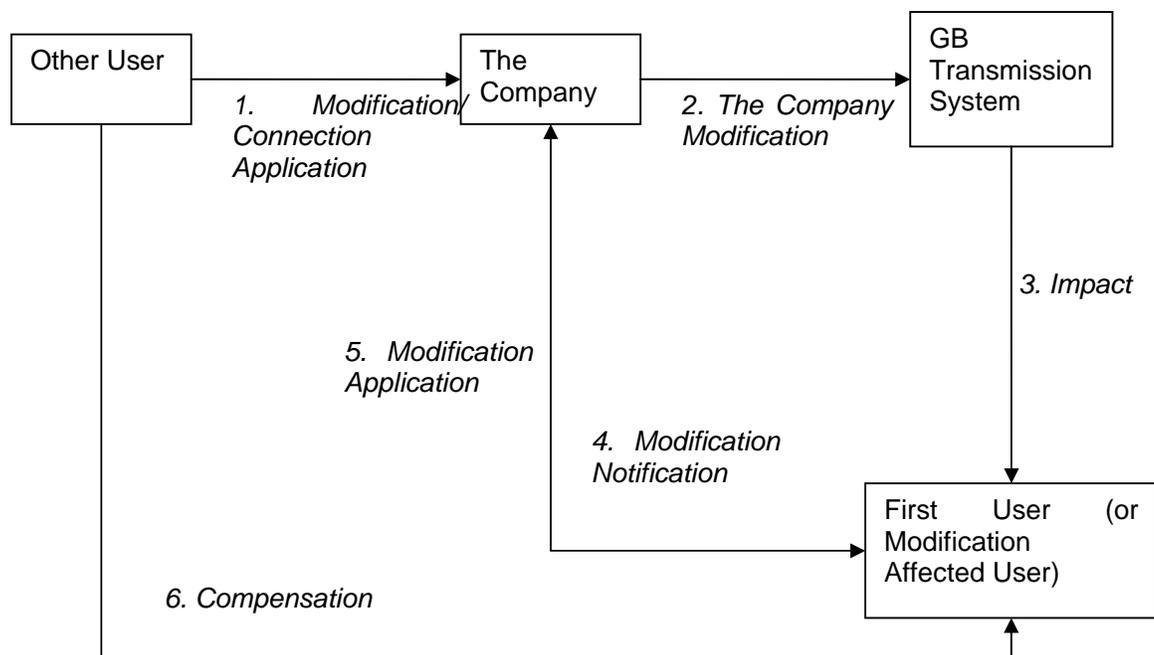
CAP 146 identifies the CUSC Defect that the Proposed Amendment seeks to address as being:-

- iii. the compensation arrangements relating to “Modification Affected Users” and
- iv. the lack of clarity regarding who is responsible for organising and carrying out Third Party Works

RWE agrees that clarification of the above areas, including the consistency of treatment between Users, third parties and NGET, would benefit the CUSC but is concerned with aspects of proposed solution. In particular RWE does not agree that the cost of all Third Party Works should necessarily be borne by NGET as opposed to the party triggering these works. Such treatment would result in increased costs for the population of TNUoS payers who would, in general, receive little or no benefit in terms of enhanced transmission assets.

##### Changes proposed under this Alternative Amendment

1. Under the CUSC, if a party (the Other User) applies to NGET for either a new connection or a modification to an existing connection, the required works may include works on the GB Transmission System and also assets owned by another User (the First User) (Paragraph 6.9.3). In this case, the party requesting the connection / modification may have to pay compensation to the First User (Paragraph 6.10.3).



Currently, no provision is made for compensation to the First User if it is required to modify its assets as a result of modification works to the GB Transmission System where a specific User is not identified as being responsible for necessitating these works. Furthermore, NGET do not appear to be subject to any incentive to identify or attribute any such works to another User.

It would appear to be inconsistent and unreasonable for the First User to be denied compensation in the event that another User is not specifically identified or associated with a Modification to the GB Transmission System; for example where the works are carried out for the benefit of several Users, or works to optimise the GB Transmission System by increasing the Connection Point / local GB Transmission System voltage. It is proposed that the compensation provisions in favour of the First User should also include compensation to be paid by NGET where another User has not been identified.

2. In addition, Paragraph 6.10.3 is not specific in describing the extent of the works carried out by the First User which the Other User would be liable for. For example, these works may include betterment of plant and apparatus operating at several voltage levels below that of the Connection Point, potentially exposing the Other User to inappropriate liabilities which would be difficult to quantify. It is proposed that Paragraph 6.10.3 be clarified that compensation to the First User would be limited to the costs of works to Plant and Apparatus operating at the Connection Point voltage only.
3. It is also proposed to define Third Party Works within the CUSC. Third Party Works are currently defined in the Construction Agreement as being those works specified in Appendix N. This definition provides no guidance to Users regarding the need for these works, the obligation to carry out the works, and liability for their cost.
4. The Construction Agreement prohibits the User's Equipment being energised at the Connection Site if the Third Party Works have not been completed. However, the current arrangements appear to place all responsibility on the Other User to ensure that such works are carried out, which effectively bypasses the provisions of Paragraphs 6.9.3 and 6.10.3. It is proposed that, where Third Party Works are to be carried out by a party to the CUSC, the provisions of Paragraphs 6.9.3 and 6.10.3 would apply. This would ensure that the obligations of CUSC parties to carry out and pay for Third Party Works, would be consistent with the CUSC.

### **Proposed legal Text**

CUSC 6.10.3 ~~The Company~~ shall have no obligation to compensate any User (the "First User") for the cost or expense of any ~~Modification~~ required to be made by any User as a result of any ~~The Company Modification~~ under Paragraph 6.9.3.1. Where such ~~The Company~~ a ~~Modification~~ is made by a User (the "First User") as a result of a ~~The Company Modification~~ under Paragraph 6.9.3.1 made as a result of the construction of a **New Connection Site** or a **Modification** for another User (the "Other User") or for **The Company**, the **Other User** or **The Company** as applicable shall compensate the **First User** for the reasonable and proper cost and expense of any such **Modifications** required to be made by the **First User** to **Plant** and/or **Apparatus** directly connected to the **Connection Point** as a result of that **The**

**Company Modification.** Such compensation shall be paid to the **First User** by the **Other User** or **The Company** within thirty days of production to the **Other User** of a receipted invoice (together with a detailed breakdown of such reasonable costs and expenses) for the expenditure which has been incurred by the **First User**.

**New CUSC Definition – Third Party Works**

The works to **Plant** and/or **Apparatus** which is not owned or operated by either **The Company** or the **User** (the “**Other User**”) and is specified in Appendix N of the **Other User’s Construction Agreement**. The **Other User** is responsible for ensuring that all such works to **Plant** and/or **Apparatus** which is not owned or operated by another **User** (the “**First User**”) are completed prior to the **Completion Date**. In the case of **Third Party Works** to be carried out by the **First User**, **The Company** shall submit to the **First User** a **Modification Notification** under Paragraph 6.9.3 and any compensation payable to the **First User** by the **Other User** or **The Company** as appropriate shall be in accordance with Paragraph 6.10.3.

## National Grid Alternative Amendment – WGAA D

### Proposed Alternative to CAP146 (Third Party Works)

#### Introduction

- 2) In summary, E.ON's Amendment Proposal raises a number of concerns with the current process, including:
  - i) It is inappropriate to potentially expect a new entrant to contract directly with an incumbent competitor in order to gain entry to the market;
  - ii) National Grid cannot identify the most economic and efficient overall solution to connect a new generator if it does not see of all the relevant costs;
  - iii) National Grid should be responsible for the delivery of all works required to provide a connection to ensure the programme is optimised;
  - iv) National Grid lacks control and influence over the programming of TPW which ultimately leads to an impact on our ability to deliver transmission works;
  - v) National Grid's approach to TPW is inconsistent with a shallow connection charging regime and a "one stop shop" for User.
- 3) E.ON's Amendment Proposal seeks to address these concerns by making National Grid responsible for the identification, delivery, and cost of all TPW. If Ofgem were to accept this Amendment Proposal, National Grid would face additional contractual responsibilities, would be exposed to additional risks, and would also be exposed to additional costs which are not included in our Price Control. On these grounds National Grid cannot support the E.ON proposal. The reasoning for this is set out below.

#### E.ON Proposal - National Grid's Views

- 4) National Grid is concerned that there are a number of flaws behind the E.ON Amendment Proposal
  - a) It is inappropriate to potentially expect a new entrant to contract directly with an incumbent competitor in order to gain entry to the market. *This is a natural consequence of the nature of the transmission system - one User's development will always have a potential impact on other Users. If National Grid were to be responsible for resolving such impacts then it would be undertaken under the Licence framework. This constrains us to act economically and efficiently and this may not be conducive to resolving the matters in a timescale that is acceptable to the triggering User. It is likely therefore that in order to resolve the TPW issues the triggering User would have an incentive to reach a commercial arrangement with the affected User.*
  - b) National Grid cannot identify the most economic and efficient overall solution to connect a new generator if it does not see of all the relevant costs. *The 3 month connection application / offer process means that any assessment of TPW is based on an engineering estimate and does not take account of detailed costs. Only once the triggering User signs their Connection Offer would it normally be possible to begin discussions with other system Users that could potentially be affected. Making National Grid responsible for the costs of these works will not change this.*
  - c) National Grid should be responsible for the delivery of all works required to provide a connection to ensure the programme is optimised. *National Grid accepts the need for the development of a process in this area. Where TPW are required to permit National Grid to undertake its works (e.g. a water main, or DNO cable needs to be relocated) then we propose that the works and*

*timescale for resolution should be set out in the construction agreement (CONSAG) between the User and the third party. Where the works are consequential on an affected User's system then the Modification Notice process should be used to explicitly advise potentially affected Users that there may be an impact on their system arising from the new development. Once again timescales should clearly be set out so that the affected and triggering parties are aware of the position. It is for consideration as to whether when an affected User fails to complete TPW in the required timescales then the triggering User should be permitted to connect and the affected User should be required to restrict their operation until the matter is resolved.*

- d) National Grid lacks control and influence over the programming of TPW which ultimately leads to an impact on its ability to deliver transmission works. *This is true – but it can be addressed in part by the process changes we are proposing together with the additional clarity on programme milestones. Ultimately (under the current framework) National Grid's ability to influence the undertaking of TPW (which are a commercial matter) is limited by the Transmission Licence. As a result any problems in getting TPW completed are best resolved by the party that has most interest in the matter – namely the triggering User.*
- e) National Grid's approach to TPW is inconsistent with a shallow connection charging regime and a “one stop shop” for User. *Exposing a User to the full cost of TPW (non-transmission) is not inconsistent with charging policy for transmission works. While a “one stop shop” has attractions it is only worthwhile where it leads to the development of an economic and efficient system.*
- 5) In addition to the above points there is a fundamental cost recovery issue. The provision of TPW is not a service currently carried out by National Grid and as such, the associated costs are not included in our Price Control. If National Grid becomes responsible for TPW, then we believe that this should be treated as an Excluded Service. In order to demonstrate that this service is economic and efficient, National Grid would seek to charge the costs to the triggering User. This treatment:
- Is consistent with the treatment of line diversions in both the transmission and distribution licences;
  - gives Ofgem comfort that the costs are efficiently incurred, since there is a User willing to pay;
  - allows the Users to contract directly with the Third Party if they believe they can negotiate a better price.
- 6) Given the above, National Grid is not able to support the E.ON proposal in its current form, nevertheless we recognise that there is scope for some improvements in the TPW arrangements and so we propose an Alternative Amendment that we believe broadly addresses the issues of concern.

#### **Proposed Alternative Amendment to CAP146**

- 7) National Grid believes that amendments to the process for managing TPW together with greater clarity are all that is necessary. We consider that the (triggering) User should remain responsible for the costs of TPW.

#### **Description**

- 8) The Alternative Amendment being proposed is a process only change which would aim to clarify and code National Grid's treatment of TPW within the CUSC and associated agreements. The principle features would be as follows:

- i) The requirement or potential for TPW would be identified by National Grid at the stage of developing the connection offer
- ii) The timetable for resolving any TPW would also be identified
- iii) The triggering User would be responsible for procurement, delivery of the works, the risk of non-delivery, and the associated costs (i.e. no change)
- iv) The CUSC provides a process (Modification Notification) to manage changes on National Grid's and Users' systems that may have an impact on other Users. Once the Triggering User had signed their Connection Offer, National Grid would use this process to advise all potentially affected Users that a change to the transmission system has potential to affect them
- v) Once any affected Users had identified any TPW National Grid would notify the triggering User setting out the details of the TPW and associated timing
- vi) CUSC provides a route for an affected User to be compensated by a triggering User where the works are triggered by the construction of a new connection site. This will not preclude a User from entering into a commercial deal outside of the CUSC.

#### **Benefits**

- 9) The National Grid Alternative Amendment:
  - codifies National Grid's current treatment of TPW and provides clarity for Users;
  - maintains existing CUSC principles (Modification process).

#### **Further Points for WG Discussion**

- 10) It has already been noted that one of E.ON's concerns is the power of an incumbent competitor to affect a new project seeking connection. In relation to managing the programme of works it has been noted above that where an incumbent affected party delays the completion of identified TPW then under the current framework it is the new (triggering) User that suffers in the sense that their connection and energisation is delayed. It is for consideration as to whether the framework should be changed in this area to permit connection and energisation of the triggering User. The failure of the incumbent to modify their plant in the appropriate timescale would need to be addressed - possibly via derogation from the Grid Code or operational restrictions depending on the nature of the issue.
- 11) It is also noted that where an affected User is a regulated network business then they may be able to recover TPW costs under their price control mechanism. In such cases there will be an efficiency test applied by the regulator and recovery under their price control may be more appropriate than under CUSC 6.10.3 (i.e. 6.10.3 should not apply to regulated network businesses).

## ANNEX 6 – Cost Forecast for Third Party Works (England & Wales Only)

### Cost forecast for Third Party Works

Site	Third Party Works	Approx. Costs
Power Station	Replace third party generator 400kV circuit breaker and associated equipment with 63kA capable equipment. Underground DNO 132kV overhead line circuit at remote site by October 2007 to enable 400kV substation to be constructed	£3m for 132kV line diversion
Power Station	1. Divert 132kV underground cables, owned by DNO, from the 400kV substation extension site 2. User shall confirm with relevant 3rd parties (DNO) that the new generation connection will not lead to their equipment fault ratings being exceeded.	1. Estimated at £3m 2. Not yet determined
Power Station	The removal of thermal and fault level issues in the parallel DNO network	New line within DNO network & substation extension./ reconfiguration £10m
Power Station	Replace 132kV switchgear due to fault levels at DNO substation Replace 400kV switchgear due to fault levels at third party generator	£6m
Power Station	Works on DNO system to divert OHL Route via cables around new transmission substation	£3m for 132kV line diversion
Power Station	Works on DNO system to divert OHL Route via cables around new transmission substation	£15m for new line and new GSP to mitigate loss of route.
Power Station	Works on DNO system to compensate for loss of 132kV circuit	£22.5m (based on contracts in place)
GSP	1.DNO to build new 132kV GIS double busbar substation at GSP site. 2. DNO to upgrade equipment at associated BSP	1. £5m 2. Up to £9m
Power Station	Diversion of DNO circuits	£3m
GSP	Diversion of existing DNO OHLs to cable routes to mitigate 275kV OHL connection	£2.5m
Power Station	Possible impact on existing CB's at third party power stations	£4m
TOTAL		£80.7m