

Amendment proposal:	<b>Connection and Use of System Code (CUSC) CAP146: Responsibility and liabilities associated with Third Party Works and Modifications made by Modification Affected Users</b>		
Decision:	The Authority <sup>1</sup> directs that CAP 146 WGAA D be made <sup>2</sup>		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the CUSC and other interested parties		
Date of publication:	12 December 2007	Implementation Date:	12 January 2008

## Background to the amendment proposal

Cap 146<sup>3</sup> seeks to change the CUSC in respect of two areas where works are required to be carried out on assets owned by third parties in order to accommodate new or increased transmission entry capacity or other changes to the infrastructure of the transmission system (ie Third Party Works and Modifications made by Modification Affected Users as contained in Sections 6.9 and 6.10 of the CUSC).

Third Party Works (TPW) 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 User and National Grid Electricity Transmission plc (NGET), 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. NGET's working practice is to require the connecting party to do so.

Section 6.9 and 6.10 of the CUSC contain provisions relating to Modifications (as defined in the CUSC). Paragraph 6.10.3 states that NGET has no obligation to compensate any User (the "First User") for the cost or expense of any Modification required to be made by any User, where that Modification is triggered as a result of works on the transmission system. Where a Modification is required as a result of the construction of a new connection or a Modification for another User (the "Other User"), the Other User is required to compensate the First User for the reasonable and proper costs of any such Modification. Where no Other User is identified as triggering the First User's Modification, NGET's working practice is to require the First User to take responsibility for organising and paying for these works as the CUSC does not specify who is responsible for this.

To change this situation, E.ON UK ("the Proposer") submitted CAP 146: Responsibility and liabilities associated with Third Party Works and Modifications made by Modification Affected Users to the CUSC Amendments Panel meeting on 26 January 2007.

## The original amendment proposal

CAP 146 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

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

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

<sup>3</sup> CAP 146 Amendment report available from NGET's website at <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/>

system (ie TPW and Modifications made by Modification Affected Users as contained in Sections 6.9 and 6.10 of the CUSC). The Proposer is of the view that NGET's interpretation of who should be responsible for undertaking and paying for all works required to facilitate changes to the transmission system is unreasonable and that the CUSC should be changed accordingly.

The Proposer believes that the user should not be responsible for arranging and paying for either category of works described above as in the Proposer's view:

- this is inconsistent with a shallow connection regime, clustering and the one-stop-shop principle of the GBSO being responsible for providing connection offers
- 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
- it is not clear that the applicant is the most appropriate party to carry out this work
- NGET 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.

Consequently, CAP 146 proposes that the costs associated with TPW and Modifications should be recovered via Transmission Network Use of System (TNUoS) Charges and/or Connection Charges as appropriate and should apply to all active Construction Agreements at the time of implementation after the Authority's decision.

The CAP 146 Working Group Report was submitted to the CUSC Panel meeting on 27 April 2007. Following evaluation by the Working Group, the Amendments Panel determined that CAP146 was appropriate to proceed to wider industry consultation by NGET.

In the course of the Working Group consideration of CAP 146 a number of Working Group Alternative Amendments (WGAA) were proposed. In addition, a respondent to NGET's consultation on CAP146 and the WGAA's proposed a Consultation Alternative Amendment (CAA). These are described below.

### **Alternative amendments**

The Working Group developed four WGAA. These are described below, together with the rationale for each.

#### *WGAA – A*

WGAA- A was proposed by the Working Group ("the WGAA A Proposer") and is the same as the CAP146 Original proposal but would only apply to Construction Agreements issued and signed after the implementation date and not to all active Construction Agreements with a Completion date after the implementation date.

The main rationale for proposing this alternative was to reduce the implementation period relative to the Original Proposal from 3 months to 1 month. As well as speeding up the implementation process it was also deemed by the Working Group to be less problematic.

## *WGAA – B*

WGAA – B was proposed by RWE npower (“the WGAA B Proposer”) and proposes that the cost of TPW should be borne by NGET only in circumstances where no triggering User is identified. The reason is that the WGAA B Proposer considers that if NGET was responsible for the costs of all TPW, this would increase costs for the population of TNUoS payers who would, in general, receive little or no benefit in terms of enhanced transmission assets.

CUSC 6.10.3 requires triggering Users to pay compensation to affected users where such affected users incur costs resulting from a Modification in accordance with CUSC 6.9 (i.e. a new connection or modification of an existing connection). If no triggering User is identified then the First User (i.e. the affected User) is required to bear its own costs. WGAA –B proposes to extend the compensation provisions within the CUSC to allow the First User to receive compensation from NGET when a Modification is issued and no triggering User has been identified.

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 (ie the triggering User) would be liable for, potentially exposing the Other User to inappropriate liabilities. WGAA –B proposes to clarify CUSC 6.10.3 and limit the costs of the works to “Plant and Apparatus operating at the Connection Point” at transmission voltage.

It is also proposed to define TPW within the CUSC as the WGAA B Proposer considers the current definition fails to provide guidance to Users regarding the need for such works, their obligation to undertake / procure the works and the liability for their cost.

The Construction Agreement prohibits the User’s Equipment being energised at the Connection Site if the TPW have not been completed. The WGAA B Proposer considers that 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. WGAA B proposes that, where TPW are to be carried out by a party to the CUSC, the provisions of Paragraphs 6.9.3 and 6.10.3 should apply. The WGAA B Proposer considers that this would ensure that the treatment of CUSC parties, with respect to their obligations to carry out and pay for TPW, would be consistent with the CUSC.

Finally, it is proposed that WGAA –B should apply to all active Construction Agreements at the time of implementation after the Authority’s decision.

## *WGAA – C*

WGAA – C was proposed by the Working Group (“the WGAA C Proposer”) and is the same as the WGAA – B but would only apply to Construction Agreements issued and signed after the implementation date and not to all active Construction Agreements with a completion date after the implementation date.

As with WGAA – A, the main rationale for proposing this alternative was to reduce the implementation period relative to WGAA - B from 3 months to 1 month. As well as speeding up the implementation process it was also deemed by the Working Group to be less problematic.

## *WGAA – D*

WGAA-D was proposed by NGET (“the WGAA D Proposer”) and aims to clarify and formalise the process surrounding the existing arrangements. The WGAA D Proposer believes that it is appropriate for the Triggering Party to remain responsible for the costs associated with TPW triggered by their connection or increase in TEC.

The principal features of WGAA D are as follows:

- the requirement or potential for TPW would be identified by NGET at the stage of developing the Connection Offer
- the timetable for resolving any TPW would also be identified
- 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 to NGET’s working practice)
- the CUSC provides a process (under which NGET serves relevant Users with a Modification Notification) to manage changes on NGET’s and Users’ systems that may have an impact on other Users. Once the Triggering User had signed their Connection Offer, NGET would use this process to advise all potentially affected Users that a change to the Transmission System has potential to affect them
- once any affected Users had identified any TPW NGET would notify the Triggering User setting out the details of the TPW and associated timing, and
- 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.

## *Consultation Alternative Amendment*

A Consultation Alternative Amendment (CAA) was proposed by CE Electric UK (“the CAA Proposer”). This seeks to change the legal text of WGAA – D by amending the proposed definition of “Third Party Works” in Section 11 and the Standard Form of the Construction Agreements and creates a new definition of “Consequential Works”.

Within the Working Group a differentiation was made between ‘enabling works’ (those works required to be undertaken to enable the construction of transmission assets required to provide the connection to the connecting User) and ‘consequential works’ (those works required as a consequence of the new User connection and which need to be undertaken before a User can become operational e.g. replacement of an existing Users equipment to cater for increased fault level). In the view of the CAA Proposer making this distinction helped to identify that certain works (e.g. securing wayleave for a new transmission circuit, the diversion of an overhead telephone line or underground gas pipeline etc) may be required to construct new transmission assets and such works should be NGET’s responsibility.

In addition, CAA proposes that the costs of these works should also be included as part of the costs of construction of the transmission assets i.e. either connection or infrastructure assets as appropriate, and recovered in the normal manner. The CAA Proposer considers that such items of work are inextricably linked to the construction of the transmission assets and that they should not be included within the scope of TPW for which a user will be responsible.

## **CUSC Panel<sup>4</sup> recommendation**

The CUSC Panel undertook a vote on CAP 146 (“Original Proposal”) and each Alternative relative to the current provisions of the CUSC. This vote determined Panel members’ views on whether each proposal better facilitated the achievement of the applicable CUSC objectives than the existing provisions.

The Panel voted by majority that the Original Proposal, WGAA – A and WGAA – B did not better facilitate the achievement of the applicable CUSC objectives. The vote was evenly split in respect of WGAA – C. The Panel voted by majority that WGAA – D and CAA did better facilitate the achievement of the applicable CUSC objectives compared to the existing provisions of the CUSC.

The Panel then voted by majority that WGAA D was the best overall.

## **The Authority’s decision**

**The Authority has considered the issues raised by amendment proposal CAP 146 (and its Alternatives) and the final Amendment Report (AR) dated 11 September 2007. The Authority has considered and taken into account the responses to NGET’s consultation on the amendment proposal which are attached to the AR<sup>5</sup>. The Authority has concluded that:**

- 1. implementation of CAP 146 WGAA D will better facilitate the achievement of the applicable objectives of the CUSC<sup>6</sup>; and**
- 2. directing that the amendment be made is consistent with the Authority’s principal objective and statutory duties<sup>7</sup>.**

## **Reasons for the Authority’s decision**

Having considered the Amendment Report the Authority considers, having regard to the applicable CUSC objectives and its statutory duties, that WGAA – D would best facilitate the Applicable CUSC objectives when compared to CAP 146 Original Proposal, the other options developed under CAP146 and the existing provisions of the CUSC.

The Authority agrees with the Proposer’s view that the current CUSC arrangements for the treatment of TPW and Modifications made by Affected Users are not clearly defined. This is particularly the case with regards which party is responsible for organising, undertaking and funding such works.

The Authority notes that all of the proposed amendments would define these responsibilities more clearly than the current CUSC provisions; however we have reservations about the Original Proposal and WGAA – A, B and C, which all propose that NGET should be responsible for undertaking and funding such works.

---

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

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

<sup>6</sup> As set out in Standard Condition C10(1) of NGET’s Transmission Licence, see: [http://epr.ofgem.gov.uk/document\\_fetch.php?documentid=5327](http://epr.ofgem.gov.uk/document_fetch.php?documentid=5327)

<sup>7</sup>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.

The following sections set out the Authority's views as to whether the Original Proposal and each of the Alternatives better facilitate the achievement of the applicable CUSC objectives as set out in Standard Condition C10 of the transmission licence.

These 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 the generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.

#### CAP 146 Original Proposal

The CAP146 Original Proposal seeks to make NGET responsible for undertaking and funding TPW and Modifications (as defined in paragraph 6.10.3 of the CUSC).

NGET has a statutory<sup>8</sup> obligation to develop and maintain an efficient, co-ordinated and economic transmission system. The Authority notes that in its role as GB system operator, NGET is responsible, amongst other things, for taking forward activities related to the construction and maintenance of transmission infrastructure to facilitate access to the GB transmission system. To the extent that NGET faces costs in undertaking these activities, and these are economically and efficiently incurred, NGET can recover such costs in accordance with its Transmission Price Control. NGET's activities in this respect are funded through the charges it levies for connection to and use of the GB transmission system.

Whilst the Authority notes that this proposal defines more clearly responsibilities in respect of TPW than the current CUSC provisions, the Authority does not agree that broadening the scope of NGET's activities to include TPW (including those associated with Modifications), better facilitates the achievement of applicable CUSC objective compared with the existing provisions of the CUSC.

The Authority notes the views of respondents that TPW are required to facilitate the connection of individual Users and as such do not benefit any other Users of the transmission system. The Authority agrees that for this reason, TPW fundamentally differ from the transmission infrastructure works undertaken by NGET. The Authority does not therefore consider it appropriate for NGET to be responsible for such works in the same way that it is responsible for taking forward transmission infrastructure works. The Authority considers that it is appropriate that users of the transmission system are responsible for maintaining those assets required to make them compatible and conform with the available transmission system.

The Authority notes that NGET's working practice is to make the triggering user responsible for undertaking and funding these works. It has been argued by the Proposer that the current arrangements are contrary to the Plugs shallow charging methodology. We do not agree that this is the case. Plugs established a 'shallow' connection policy, under which users are responsible for the costs of connection assets<sup>9</sup>, whilst the costs of transmission infrastructure assets are recovered from all users via

---

<sup>8</sup> Electricity Act 1989, as amended by the Utilities Act 2000 and the Energy Act 2004

<sup>9</sup> Connection assets are defined in NGET's document titled "The Statement of the Connection Charging Methodology" which can be found at <http://www.nationalgrid.com/uk/Electricity/Charges/chargingstatementsapproval/>

TNUoS. The Authority notes that TPW are works on assets that are owned by parties other than NGET – ie, these are not works on transmission assets, but on connection assets at existing sites owned by third parties. We therefore feel that it is consistent with Plugs that users are responsible for such works.

For the reasons set out above, and taking into account the views of respondents, the Authority does not consider that CAP146 better facilitates the achievement of the applicable CUSC objectives compared with the existing provisions of the CUSC.

#### WGAA – A

WGAA – A is based on the Original Proposal but would only apply to Construction Agreements issued and signed after the implementation date. We consider that it does not better facilitate the achievement of the applicable CUSC objectives for the same reasons as stated above. We do note however that the changes made to its implementation would negate the potentially detrimental effects associated with re-opening existing agreements.

#### WGAA – B

WGAA – B proposes that a user should receive compensation from NGET when a Modification is issued that requires the user to undertake work on the user's assets, and no triggering user has been identified. The Authority notes that this proposal would result in NGET being responsible for certain TPW, although to a lesser extent than the Original Proposal or WGAA A. We consider that WGAA B does not better facilitate the achievement of the applicable CUSC objectives for the same reasons as stated above, although we note that WGAA B would have a lesser impact than the proposals discussed above.

We note that WGAA – B also proposes to make NGET liable for only those costs that are attributable to work on assets at the relevant transmission voltage and not all work as specified in the Original Proposal and WGAA – A. In addition, WGAA B proposes to define TPW and to clarify the CUSC to apply the provisions of paragraphs 6.9.3 and 6.10.3 where the TPW are carried out by a CUSC party. The Authority notes that overall WGAA B is better than CAP 146 Original Proposal and WGAA A; however for the reasons set out above we do not consider that WGAA B better facilitates the achievement of the applicable CUSC objectives.

#### WGAA – C

WGAA – C is the same as the WGAA – B but would only apply to Construction Agreements issued and signed after the implementation date. We consider that it does not better facilitate the achievement of the applicable CUSC objectives for the same reasons as stated above. We do note however that the changes made to its implementation would negate the potentially detrimental effects associated with re-opening existing agreements.

#### WGAA – D

WGAA – D proposes to formalise NGET's current working arrangements whereby responsibility for procuring and funding TPW and Modifications lies with the Triggering User. As with the other proposals, it improves clarity by defining which party is responsible for such works but does not propose that NGET is responsible for these

works. This proposal provides transparency to NGET's established working precedent. By explicitly codifying these liabilities we feel it will reduce the scope for dispute between parties and therefore improve the efficiency by which parties are able to be connected to the transmission system.

The Authority also notes that WGAA – D proposes to establish a formal process whereby TPW are identified at the earliest opportunity (during the development of the connection offer) at which point a timetable for resolving such works is also identified. We feel that by clarifying the works that are needed and dates by which they must be done contributes to improving the efficiency by which connections may be completed.

The Authority considers that it is an important factor in the efficient and economic development of the transmission system that Users are appropriately liable for the costs that they incur on the system. It is these cost signals that contribute to Users locating at points on the system that are the most economic and efficient. Were such signals to be diluted or distorted by requiring NGET to recover such costs from the generality of Users, we feel this would be to the detriment of the efficient and economic development of the system.

We further note concerns raised by some respondents to NGET's consultation that competition may be affected when Users (particularly new connections) must approach incumbent Users to discuss TPW. Respondents argued that these incumbent Users may often be future competitors and as such may not readily facilitate the discussion and completion of TPW. We feel that this potential risk in the existing working arrangements is mitigated to a certain degree under WGAA – D by NGET codifying their role in communicating with incumbent Users and clearly establishing what TPW must be undertaken to facilitate connection.

For the reasons set out above, and taking into account the views of respondents, the Authority considers that WGAA D better facilitates the achievement of the applicable CUSC objectives compared with the existing provisions of the CUSC and the Alternatives discussed above.

## CAA

CAA is the same as WGAA D but proposes amending the proposed definition of "Third Party Works" to refer to "enabling works" and "consequential Works". CAA proposes that enabling works would be carried out and funded by NGET and consequential works would be organised and funded by new Users. For the reasons discussed previously, we do not feel it appropriate for NGET to fund and undertake works on connection assets that are only for the benefit of individual Users. As a result we are of the opinion that the Consultation Alternative does not better facilitate the applicable objectives to the same extent as WGAA – D.

## Decision notice

**In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority, hereby directs that Working Group Alternative Amendment D proposal of CAP 146: Responsibilities and liabilities associated with Third Party works and Modifications made by Modification Affected Users be made.**



**The Authority also directs that CAP 146 Original Proposal, WGAA A, WGAA B, WGAA C and CAA are rejected.**

**Robert Hull  
Director, Transmission**

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