

Amendment proposal:	Connection and Use of System Code (CUSC) - Code Governance Review: Significant Code Review (CAP183)		
Decision:	The Authority ¹ directs that this proposal be made ²		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the CUSC and other interested parties		
Date of publication:	14 December 2010	Implementation Date:	30 December 2010

Background to the amendment proposal

Many of the rules regarding participation in the electricity and gas markets in Great Britain are set out in the industry codes. The rules for making changes to these codes (codes governance) are found in the codes themselves. The CUSC sets out the rules for connecting to, and using, the electricity transmission network.

In November 2007, we launched a major review of the existing code rules relating to the making of code changes (the Code Governance Review (CGR)). In our view, there were a number of deficiencies in the existing code arrangements which needed to be addressed in relation to two specific concerns we raised:

- the need to reduce unnecessary barriers and red tape in the governance processes which prevent consistency between codes, and which would increase the transparency and accessibility of the codes for all parties, especially smaller parties and consumer representatives
- the need to address larger scale and complex change more effectively and efficiently given the significant challenges presented by the Government's social and environmental energy goals and forthcoming changes to the energy sector brought about by European legislation.

In March 2010, we published the final proposals of the CGR³. The key changes which we suggested should be made to existing code governance arrangements were as follows:

- introducing a Significant Code Review (SCR) process led by Ofgem to undertake large-scale, more complex cross-code and code-licence changes with a significant impact on consumers, competition, security of supply and/or sustainable development
- introducing a self-governance process for non-material code changes
- changes to the role of code administrators and to code administration, including an obligation on code administrators to adhere to a Code of Practice and assist code parties, small participants and consumer representatives as a 'critical friend', the introduction of an independent chairman for the CUSC Panel, and the development of Key Performance Indicators (KPIs) to measure how effectively code administrators are performing and

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

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

³ The final proposals appear at:

http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/Documents1/CGR_Finalproposals_310310.pdf.

- bringing the governance of network charging methodologies within the governance of the relevant industry codes.

We introduced licence changes to give effect to our final proposals. These licence changes were implemented in network licences on 5 July 2010 and will take effect on 31 December 2010. NGET raised CUSC amendment proposals⁴ to bring the CUSC into line with the licence changes applicable to the CUSC.

The amendment proposal

The proposer (NGET) raised CAP183 in July 2010 to introduce the SCR process into the CUSC.

As part of the CGR final proposals, we will lead a review process (known as the SCR) in areas of work which the Authority has identified and considers:

- relate to code or cross-code or code-licence issues; and
- have a significant impact on the Authority's principal objective, statutory duties and functions or relevant obligations imposed by Government policy or arising from EU law including:
 - on energy consumers or competition; and/or
 - on the environment, security of supply or sustainable development.

We would initially consult on the need for a SCR to address any issues which we identify through our annual corporate plan. As a result of this consultation, we could then decide whether to initiate a SCR. This would be through a launch statement setting out the scope of, the reasons for, and the estimated timetable and resources needed to complete, the SCR. After completing the review, the Authority would publish its conclusions on the SCR and, if it decides to do so, issue directions (SCR directions) to the relevant licensee to raise change proposals to one or more codes to reflect the conclusions. Once the relevant code changes are proposed, these would follow the standard change process under the relevant codes, including the CUSC.

CAP183 proposes that, where amendment proposals are raised before the launch of a SCR, they can follow the standard process and would not be subsumed within a SCR.

CAP183 also proposes that, from the time a SCR is launched and while it is active, any CUSC amendment proposals (including ones raised as either self-governance under the proposed self-governance route⁵ or ones following the standard amendments process) would progress as normal unless subsumed (and therefore suspended) by the Authority within the SCR at any time.

The Panel may recommend to the Authority that a proposal may be suitable for inclusion within an SCR. They would provide the reasons for coming to their view, but the final decision on whether to include the proposal within the scope of the SCR would rest with the Authority.

An amendment proposal raised as an urgent proposal could progress according to an urgent timetable, even if it related to the subject matter of a SCR, if the Authority

⁴ CAP183 to CAP188 can be found on National Grid's website at: <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/>

⁵ CAP184 proposes the introduction of the self-governance route.

agreed. A proposal made pursuant to SCR directions will continue through the change process even if it relates to the subject matter of another SCR.

Once the licensee has raised an amendment proposal(s) pursuant to the Authority's SCR directions, or on the date the Authority issues a statement that no SCR directions will be made, or 28 days after publishing its conclusions if no such statement or directions are made, the SCR would come to an end. Any proposal which had been subsumed by the Authority would be released back into the change process and the Panel would consider how to progress it.

During the assessment of CAP183, the working group raised a number of further issues to be consulted on regarding the SCR process:

- whether a subsumed proposal should be rejected after the end of the SCR if it is similar to a SCR-directed proposal;
- whether working group alternative proposals can be split from original proposals;
- whether the Panel must consult with the industry on the suitability for inclusion in a SCR of every proposal raised during a SCR; and
- whether another party could adopt a SCR-directed proposal which the Authority agrees should be withdrawn by the licensee directed to raise it.

No working group alternative was raised. The working group unanimously agreed that CAP183 better facilitates applicable CUSC objective (a) (efficient discharge by the licensee of its obligations under the Transmission Licence) and unanimously agreed that it would be neutral with regard to applicable CUSC objective (b) (facilitating effective competition in the generation and supply of electricity).

In the proposer's view, it is under a mandatory requirement to implement the relevant licence changes in the CUSC to align the licence and the code. By doing so, in the proposer's view, CAP183 would better facilitate applicable CUSC objective (a).

CUSC Panel⁶ recommendation

On 3 September 2010, the CUSC Panel voted by majority (5:2 with one panel member neutral) in favour of CAP183. The majority of panel members considered that CAP183 would better facilitate applicable objective (a) while a minority of panel members considered that CAP183 would not better facilitate this applicable objective. One panel member was neutral (gave zero weight) to this applicable objective. One panel member also considered that CAP183 would better facilitate applicable objective (b). Two panel members considered that CAP183 would not better facilitate this applicable objective, while five panel members were neutral with regard to applicable objective (b). The views of panel members appear in full in the CAP183 final Amendment Report (AR).

The Authority's decision

The Authority has considered the issues raised by CAP183 and the final AR dated 9 November 2010. The Authority has considered and taken into account the responses to the consultations by the working group and NGET on CAP183 which are attached to the AR⁷. The Authority has concluded that:

⁶ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with the section 8 of the CUSC.

⁷ CUSC amendment proposals, amendment reports and representations can be viewed on NGET's website at <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/>

1. implementation of the amendment proposal will better facilitate the achievement of the applicable objectives of the CUSC⁸; and
2. directing that the amendment be made is consistent with the Authority's principal objective and statutory duties⁹.

Reasons for the Authority's decision

We note the responses received on the issues raised by the working group in its consultation and that all except one respondent supported implementation of CAP183.

Applicable Objective (a) (the efficient discharge by the licensee of the obligations imposed upon it by the act and the Transmission Licence)

We agree with a majority of panel members, all working group members¹⁰ and almost all respondents that CAP183 better facilitates this objective. We agree with NGET that its new licence obligations, resulting from our CGR changes, would be better reflected in the CUSC amendments process under CAP183 as compared to the baseline.

We also agree with NGET that adopting a holistic approach to code changes through a SCR process will increase the efficiency of the change processes overall for a number of the codes and avoid the fragmented approach to code changes which we highlighted as a concern during the CGR. As we anticipate conducting no more than one or two SCRs in a year, we consider that there are benefits in terms of increased focus on the issues which would be the subject of SCRs leading to conclusions which benefit the industry and consumers. We would intend to conduct as open, inclusive and accessible a SCR process as possible to allow full and effective engagement with all interested parties.

NGET is obliged by its licence to ensure that the code amendment processes comply with the relevant licence requirements¹¹. While CAP183 more closely aligns the CUSC amendments process with the licence requirements and is therefore an improvement on the current baseline, we consider that there are some outstanding issues that should be addressed. However, we do not consider that these issues are sufficiently material to warrant our rejection of CAP183, particularly given that they will instead be considered as past of a review, as set out below.

Applicable Objective (b) (facilitating effective competition in the generation and supply of electricity)

We note and agree with one Panel member that a holistic consideration of issues through a SCR is more likely to lead to solutions which have a beneficial impact on competition rather than the current piecemeal approach to code changes. These benefits have been explored as part of our Impact Assessment for our Final Proposals. We therefore consider that the implementation of CAP183 would also better meet objective (b) in the long term, though an assessment would more appropriately be made of the future

⁸ As set out in Standard Condition C10(1) of NGET's Transmission Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=5327

⁹ 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 as amended.

¹⁰ At the Working Group meeting on the 27 August 2010, six votes were cast which were unanimous in agreeing that CAP183 better facilitated the achievement of Applicable CUSC Objective (a) than the baseline and should be implemented.

¹¹ In particular Standard Licence Condition C10 14A obliges NGET to use best endeavours to ensure compliance by 31 December 2010.

proposals which benefit from this facilitating change, and should not be pre-empted or double-counted by inclusion in this decision.

Other issues

We note that a number of process issues were raised by the working group for consultation. In our view, these issues have an impact on the overall efficiency of the amendments process. All relevant parties (the Panel and code parties) must consider how best to operate an efficient process when, for example, a proposal that had previously been subsumed into a SCR is released into the standard amendments process after the SCR process is completed and a SCR-directed proposal has been raised.

Legal text

We note that we raised a number of issues with the CGR CUSC legal text which could not be resolved at the Company Consultation stage of the process. We also note NGET's letter of 9 November 2010¹² which sets out a process for dealing with the outstanding legal text issues through a further amendment proposal. We understand that a review of the CUSC legal text will be undertaken by the CUSC Governance Standing Group. We agree that this is an appropriate way forward and that work on the eight significant concerns in particular that we have highlighted should take precedence. We intend to engage with the Governance Standing Group's review once this begins.

Decision notice

In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority, hereby directs that amendment proposal CAP183: *'Code Governance Review: Significant Code Review'* be made.

Mark Cox,
Associate Partner, Smarter Grids and Governance
Signed on behalf of the Authority and authorised for that purpose

¹² The letter appears at: <http://www.nationalgrid.com/NR/rdonlyres/54A69C00-7CE9-49C2-8231-6AECD9B4614D/44036/OfgemCodeGovernanceReviewlegalcommentsletterfinal.pdf>.