

Amendment proposal:	Connection and Use of System Code (CUSC) - Code Governance Review: Self-governance (CAP184)		
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 help to 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 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 CAP184 in July 2010. CAP184 proposes to introduce into the CUSC an alternative route (the 'self-governance' route) for progressing amendment proposals. Under this route the decision on whether to implement certain amendment proposals would be made by the CUSC Panel instead of the Authority. This route would be followed when the Panel decides that a proposal fulfils the self-governance criteria and the Authority does not object or where the Authority directs that a proposal is suitable for the self-governance route. To follow the self-governance route, a proposal, if implemented, must not have a material effect on:

- existing or future electricity consumers
- operation of the National Electricity Transmission System (NETS)
- security or safety of supply or sustainable development or management of market or network emergencies
- competition
- CUSC governance or modification procedures

CAP184 provides that the proposer of an amendment could state whether it considers its proposal should be treated as a self-governance proposal when raising the amendment and provide reasons for this treatment. The Panel would decide whether the self-governance criteria are met and produce a statement to this effect.

The Authority will be able to veto this decision if it feels that the self-governance criteria have not been satisfied, or vice versa. For instance, new evidence may also come to light during the development or consultation process which suggests the proposal is, or is not immaterial. If the Authority does not veto the proposal following the self-governance route, the -outcome of the Panel vote (made in consideration of whether the proposal better facilitates the relevant objectives than the prevailing baseline) would now be a decision, rather than simply a recommendation to the Authority.

A self-governance proposal would follow a process of assessment by a working group and/or consultation prior to a Panel decision. Consultation responses would be submitted to the Authority at least 7 calendar days before any Panel decision. Once the Panel made a decision on a self-governance proposal, the decision would be subject to appeal to the Authority up to and including 15 working days from the date of the decision. If no appeal is made within 15 working days from the date of the Panel's decision on a self-governance proposal the Panel's decision would stand. CAP184 sets out the routes that an appeal to the Authority could follow:

- the Authority would uphold an appeal and decide on the proposal itself without further Panel input or dismiss the appeal and uphold the Panel's decision, or

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

- the Authority would uphold an appeal and refer the decision back to the Panel for re-consideration as a self-governance proposal with the Panel making the decision.

If, having upheld the appeal, the Authority's re-makes the decision itself the Panel's decision would become its recommendation. The Authority decision would be subject to appeal to the Competition Commission as if it had been made under the normal modification procedure.

A working group assessed CAP184 and agreed unanimously that it should be implemented. No working group alternative amendments were raised.

In the proposer's view, it is under a mandatory requirement to implement the relevant licence changes in the CUSC to align it with the Transmission licence. By doing so, in the proposer's view, the proposal would better facilitate applicable CUSC objective (a) (efficient discharge by the licensee of its obligations under the Transmission Licence).

CUSC Panel⁵ recommendation

On 29 October 2010, the CUSC Panel voted unanimously in favour of CAP184. All eight panel members present who voted considered that the proposal would better facilitate applicable objective (a), and all panel members felt that it would be neutral with regard to applicable objective (b). The views of panel members are set out in full in the final Amendment Report (AR).

The Authority's decision

The Authority has considered the issues raised by CAP184 and the final AR dated 9 November 2010. The Authority has considered and taken into account the responses to the working group and NGET's consultations on CAP184 which are attached to the AR⁶. The Authority has concluded that:

1. implementation of the amendment proposal will better facilitate the achievement of the applicable objectives of the CUSC⁷; and
2. directing that the amendment be made is consistent with the Authority's principal objective and statutory duties⁸.

Reasons for the Authority's decision

We note the unanimous support for CAP184 from working group members, consultation respondents and all voting Panel members in favour of implementing CAP184.

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 the proposer, the Panel and all respondents that CAP184 does better facilitate this objective. NGET is obliged by its licence to ensure that the CUSC

⁵ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with the section 8 of the CUSC.

⁶ CUSC amendment proposals, amendment reports and representations can be viewed on NGET's website at <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/>

⁷ As set out in Standard Condition C10(1) of NGET's Transmission Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=5327

⁸The 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.

amendment processes comply with the relevant licence requirements⁹. We consider that CAP184 would improve consistency between the licence and code requirements.

We note that CAP184 is not unduly prescriptive about the application of the self-governance route. For example, the Authority could revise its view on whether a proposal ought to follow the self-governance route at any time before the Panel's decision on that proposal. This would allow for reconsideration if, for instance, new information comes to light during consultation. This flexibility in the process adds to overall efficiency and ensures that all proposals follow the most appropriate process. We also note that amending CUSC working practices, such as including the proposer's view on whether its proposal should follow the self-governance route on the proposal form, are appropriate changes that align with the purpose behind the licence changes.

We note the views of one Panel member concerning use of the 'consent to modify' process set out in the Transmission licence that is felt may duplicate self-governance or is a more appropriate route for dealing with non-material CUSC changes. We agree that there may be instances where the consent to modify route may remain an option, but would expect these to be limited to changes which either reflect a matter of fact, or are of a trivial housekeeping nature. In the past the consent route has been used for matters such as the correction of typographical or numbering errors, which do not warrant a consultation. In our view, there are two reasons why the self-governance route may be a more appropriate option:

- it avoids directly involving the Authority in addressing and deciding on non-material changes where these impacts are obvious
- it provides the Panel with increased ownership of the governance arrangements and empowers it with efficient administration of the process.

Whilst noting that there are outstanding issues in relation to the legal text accompanying CAP184 (see below), we consider that CAP184 improves consistency between the licence requirements and the CUSC amendments process as compared to the baseline and therefore does better facilitate efficient discharge of NGET's licence obligation as compared to the baseline.

The introduction of a self-governance route would also provide wider administrative benefits in terms of the time and cost required to process and implement non-material changes which increase the efficiency of the CUSC governance arrangements. We therefore consider that CAP184 does better facilitate applicable objective (a) as compared to the current baseline.

Applicable Objective (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.

We note the unanimous CUSC Panel view that CAP184 is neutral in respect of applicable objective (b). We do consider that changes introduced by the CGR Final Proposals will facilitate the timely implementation of proposals which contribute to effective competition. These benefits have been explored as part of our Impact Assessment for those Final Proposals. Therefore, whilst we do consider this objective to be pertinent, an

⁹ In particular, Standard Licence Condition C10 14A obliges NGET to use best endeavours to ensure compliance by 31 December 2010.

assessment would more appropriately be made of the future proposals which benefit from these facilitating changes, and should not be pre-empted or double-counted by inclusion in this decision. We therefore agree that it is appropriate to consider CAP184 to be neutral in respect of applicable objective (b) at this time.

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 2010¹⁰ 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 CAP184: '*Code Governance Review: Self-governance*' be made.

Mark Cox

Associate Partner, Smarter Grids and Governance

Signed on behalf of the Authority and authorised for that purpose

¹⁰ The letter appears at: <http://www.nationalgrid.com/NR/rdonlyres/54A69C00-7CE9-49C2-8231-6AEC9B4614D/44036/OfgemCodeGovernanceReviewlegalcommentsletterfinal.pdf>.