



## **WORKING GROUP REPORT VOLUME 1**

### **CUSC Amendment Proposal CAP185**

### **Code Governance Review: Role of Code Administrator and Code Administration Code of Practice**

**Prepared by the CAP185 Working Group  
for submission to the Amendments Panel**

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## 1.0 SUMMARY AND RECOMMENDATIONS

### Executive Summary

- 1.1 CAP185 - "Code Governance Review: Role of Code Administrator and Code Administration Code of Practice", was raised by National Grid Electricity Transmission plc and submitted to a special meeting of the Amendments Panel on 9<sup>th</sup> July 2010. CAP185 is part of a series of proposals which seek to implement the final proposals of Ofgem's Code Governance Review which were published on 31<sup>st</sup> March 2010 and which were implemented via a series of modifications to the Transmission and Distribution Licences from 5<sup>th</sup> July 2010.
- 1.2 CAP185 seeks to make several changes to the CUSC, including the requirement to establish an administrative body (the "Code Administrator") and for the Code Administrator to maintain, publish, review and amend the Code Administration Code of Practice (CACOP). This Amendment Proposal is described in more detail in section 3 of this report.
- 1.3 A joint Working Group for CAPs 183, 184, 185 and 188 was established and the first meeting held on 14<sup>th</sup> July 2010. Following discussions at that meeting the Working Group held a second meeting on 21<sup>st</sup> July 2010 before proceeding to Working Group Consultation. A third Working Group meeting was held on 27<sup>th</sup> August 2010 to discuss the responses, agree any Working Group Alternative Amendments (WGAA) and hold the Working Group vote. A fourth meeting was held on 15<sup>th</sup> September 2010 to discuss the revised draft illustrative legal text, provided by National Grid on 8<sup>th</sup> September 2010.
- 1.4 A Working Group Alternative Amendment (WGAA) was raised by E.ON UK at the meeting on 27<sup>th</sup> August 2010 to reflect its preferences following the Working Group agreeing the final solution for the CAP185 Amendment Proposal at that meeting. The full detail of the finalised CAP185 Original Proposal and the WGAA can be found in Annex 3 and Annex 4 to this report.

### Working Group Recommendation

- 1.5 The Working Group believes its Terms of Reference have been completed, CAP185 and any alternative amendments have been fully considered and recommends to the Amendments Panel, by majority, that CAP185 original proposal should be implemented. The Working Group also recommends that CAP185 and the Working Group Alternative Amendment should proceed to wider Industry Consultation in line with the timetable established by the Amendments Panel.
- 1.6 The Working Group voting is summarised below. There were a maximum of six Working Group votes available, with one vote made by a Working Group member acting as an alternate for an absent Working Group member. Full details of the Working Group's vote, its reasons for such voting and an explanation of the Chairman's ability to progress the WGAA is contained within section 6 and section 10 of this report.

View against Applicable CUSC Objectives	Better than baseline	Not Better than baseline	Better than original	Better than WGAA	Best
Original	6	0	-	4	4
WGAA	6	0	2	-	2

<b>Baseline</b>	-	-	0	0	0
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- 1.7 In line with definition for a “Working Group Alternative Amendment” (as set out in Section 11 of the CUSC), the Working Group chairman gave consideration to the alternative proposal, noting that within the Working Group there has been valid and extensive discussion with regards to all options. The chairman concluded that it is appropriate to allow the industry further opportunity to comment on all the options through consultation by the Company and the full range of options should be available for the Authority’s consideration. The chairman therefore exercised his right, in accordance with the CUSC, to take forward the WGAA, even though it only had minority support. The Working Group agreed that this seemed reasonable in the circumstances.

### **Summary of Working Group Consultation Responses**

- 1.8 Seven responses were received to the Working Group Consultation. All agreed that CAP185 better facilitates CUSC Applicable Objective (a) and no requests for a Working Group Consultation Alternative were put forward at this time.

## **2.0 PURPOSE AND INTRODUCTION**

- 2.1 This report summarises the deliberations of the Working Group and describes the Original CAP185 Amendment Proposal and the Working Group Alternative Amendment.
- 2.2 CAP185 was proposed by National Grid Electricity Transmission plc and submitted to the Amendments Panel for their consideration on 9<sup>th</sup> July 2010. The Amendments Panel determined that the proposal should be considered by a Working Group and that the Group should report back to an additional Amendments Panel meeting in September 2010 following a three week period of Working Group Consultation.
- 2.3 The Working Group first met on 14<sup>th</sup> July 2010 and the members accepted the Terms of Reference for CAP185. A copy of the Terms of Reference is provided in Annex 2. The Working Group considered the issues raised by the Amendment Proposal and worked through the Terms of Reference, including reviewing the illustrative legal text provided. A second Working Group meeting took place by teleconference on 21<sup>st</sup> July 2010. Following the second meeting on 21<sup>st</sup> July, the Working Group timetable has since been updated to reflect the additional Working Group meeting held on 21<sup>st</sup> July 2010 and the consequential delays to the timetable. This is under Appendix 1 within the Working Group Terms of Reference which are contained as Annex 2 in this document.
- 2.4 The Working Group Consultation received 7 responses which are contained within Volume 2 of this report and are summarised in section 12 of this document. A further meeting of the Working Group was held on 27<sup>th</sup> August 2010 to discuss the Working Group Consultation responses, finalise the original CAP185 solution and agree any Working Group Alternative Amendments, prior to undertaking the Working Group vote.

- 2.5 The Working Group timetable has since been updated to reflect the additional Working Group meetings and the consequential delays to the timetable. This is under Appendix 1 within the Working Group Terms of Reference which are contained as Annex 2 in this document.
- 2.6 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 CAP185 seeks to implement the Code Governance Review final proposals and meet the new requirements under the modified electricity Transmission Licence. The Final Proposals stipulate that Code Administrators should adhere to the Principles contained within the Code of Practice and several changes are required to the CUSC as a result of this.
- 3.2 The CUSC needs to reflect the assistance to be provided by the Code Administrator in its role as "critical friend" which obliges the Code Administrator to provide assistance to small parties and consumer representatives. It also needs to recognise the existence of the Code Administration Code of Practice (CACOP) which will be reviewed periodically by the Code Administrator. The CAP185 Amendment Proposal states that a Working Practice will be adopted for the Code Administrator to discuss any changes it proposes to the Code of Practice with the Panel. Any changes to the CACOP are subject to approval by the Authority.
- 3.3 A new Licence requirement is for the Panel Chairman to be independent of the relevant Licensee and their appointment will be approved by the Authority. It is proposed that a new independent Panel Chairman will be appointed in line with the election for Users' Panel Members in 2011 and therefore will take up their post at the same time as the Users' Panel Members on 1<sup>st</sup> October 2011. CAP185 does not specify the detailed process for this appointment as this has yet to be defined; in response to a question raised at the 9<sup>th</sup> July 2010 Amendments Panel meeting, National Grid suggested that the detailed process should be discussed by the Governance Standing Group (GSG) and it was agreed by the Amendments Panel for this to be added to the GSG Terms of Reference. The Proposal stipulates that the Panel Chairman will retain the existing casting vote for matters other than the Panel Recommendation Vote and will have an additional casting vote in the case of a deadlock when the Panel is voting on a Self-governance Amendment Proposal.
- 3.4 CAP185 also seeks to amend the CUSC to clarify the final point at which the Proposer can withdraw an Amendment Proposal. Currently, the CUSC provisions state that an Amendment Proposal may be withdrawn "at any time" (Section 8, paragraph 8.15.8). In order to provide clarity to the CUSC provisions and to align the CUSC with the principles set out in the CACOP, CAP185 proposes that an Amendment Proposal can be withdrawn up to the point when the Panel makes its recommendation vote on whether the Amendment Proposal should be implemented.
- 3.5 The final point in this CAP185 Amendment Proposal relates to improving consistency across the industry codes, in line with the principle in the CACOP. The terminology used is being aligned and therefore changes are required to the CUSC where these terms are used. The current definition of

“Amendment Proposal” is being replaced with “CUSC Modification Proposal” and the term “Working Group” is being replaced with “Workgroup”.

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

### **Presentation of Amendment Proposal**

4.1 The first Working Group meeting was held on 14<sup>th</sup> July 2010. The National Grid Representative, as Proposer of CAP185, gave a presentation of the Amendment Proposal. Discussion arose regarding how the Panel Chairman was to be appointed in the future, who they are appointed by and what costs will be involved. It was noted by the Working Group, that the detailed appointment process for the Panel Chairman would be discussed by the GSG at their next meeting. It was also noted that consideration needs to be given to appointing someone in advance in order for them to gain an insight and understanding of the nature of the CUSC Amendments Panel and it was suggested that this person could attend Panel meetings as an observer prior to formally starting their role as Panel Chairman on 1<sup>st</sup> October 2011. Due to the level of discussion that this issue provoked and the questions surrounding it, it was agreed that it would be useful to gain industry views on this as part of this Consultation in order to progress the matter. The National Grid representative made it clear that it did not intend to include an additional level of detail within CAP185, but that responses in this area would be passed to the GSG to assist them in their discussions in this area.

4.2 The National Grid representative considered that CAP185 better facilitates Applicable CUSC Objective (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by the Transmission Licence; specifically with regard to the obligation under Standard Condition C10 of the Licence. This is a mandatory requirement under the new Licence Modifications which were implemented in July 2010.

### **Working Group Terms of Reference**

4.3 The Working Group agreed the Terms of Reference for CAP185 and did not wish to include any additional items. The Working Group then proceeded to complete the actions assigned to it under the Terms of Reference, as follows:

- Clarify the future role of a “Deputy Chairman” for the Amendments Panel; if the Panel Chairman is independent, who can undertake the role of deputy?
- Confirm whether the requirement for the Code Administrator to seek the approval of the Amendments Panel prior to raising a change to the Code of Practice should be included within the CUSC;
- Review the illustrative legal drafting provided by National Grid for suitability.

4.4 The Working Group discussed how a Deputy Panel Chairman could be appointed in the event that the Panel Chairman is unable to attend a Panel meeting. It was noted by the Working Group, that the detailed appointment process for the Deputy Panel Chairman would be discussed by the GSG at their next meeting. It was suggested by one Working Group member that National Grid could provide a Deputy Panel Chairman as is currently the case. The Authority Representative suggested that one pragmatic approach would be for the Panel Members to elect a deputy from those present at the Panel meeting; the Deputy Panel Chairman thus would be familiar with the

agenda items. However, the National Grid representative noted that this then results in that person being unable to vote. A solution to this could be that the elected deputy passes their vote to an alternate Panel Member.

- 4.5 One Working Group member raised an additional issue regarding the Panel Chairman's right to a casting vote for Self-governance Amendment Proposals. The Working Group member wished to consult the industry on whether the Panel Chairman should be able to (i) use his casting vote as he saw fit or (ii) whether he should, where the Panel is equally split for and against a change, be restricted to just voting for the status quo, on the basis that the case for the change had not been made. The Working Group member noted that "status quo" voting by meeting chairs' is widely adopted custom and practice in similar situations. In the Working Group meeting on 27<sup>th</sup> August 2010, the issue of the Panel Chairman being able to abstain was considered further, in light of consultation comments received, and it was noted that this raised concerns about the deadlock situation being unable to progress in cases of a split vote. It was highlighted that a decision is required so the Panel Chairman should not be able to abstain in this scenario. One Working Group member highlighted the importance of the appeal route remaining open and therefore there is merit in giving the Panel Chairman a free casting vote. Most Working Group members and consultation respondents were happy with the Proposal and agreed that the Panel Chairman should have a casting vote, but that the CUSC should make it clear that this vote can only be cast (by the Panel Chairman, or his deputy in his absence) in favour of the status quo as the case for change has not been sufficiently made. It was noted that this effectively removed the need for a casting vote and instead in the event of a tied vote, the Panel recommendation would be the status quo. However, one Working Group member requested that a Working Group Alternative Amendment be raised (see paragraph 5.1) to allow the Panel Chairman a free casting vote.
- 4.6 With regards to raising changes to the CACOP, one Working Group member felt strongly that this practice should be included within the CUSC and that the Code Administrator should not be able to raise any changes to the Code of Practice without the explicit approval of the Amendments Panel. The Working Group member explained that this is because the Code Administrator is, in performing its duties as Code Administrator, only acting in accordance with the CUSC and on behalf of the Amendments Panel and should not be acting in its own right. The member noted that this would avoid the Code Administrator being placed in a 'conflict of interest' situation where it alone was suggesting an amendment to the CACOP which would be of a material benefit to itself. Explicit Panel approval would act as a reasonable 'check & balance' on the Code Administrator and, in the view of the member, would be in accordance with the good governance principles set out by various Parliamentary and Standards in Public Life bodies recently. The member drew a distinction between National Grid acting in its role as the Code Administrator in which case this requirement (to obtain explicit Panel approval) should apply; and National Grid raising a change to the CACOP in its own right as a user. The National Grid Representative advised that the justification for not putting this in the proposal is that the Code Administration Code of Practice change process sits within the Code of Practice and not within the CUSC so instead it is proposed that it is discussed with the Panel as Working Practice only. The member noted that the change process outlined in Principle 4 of the CACOP indicates that "Any Code Administrator or user can suggest an amendment to this Code of practice". Requiring explicit Panel approval before the Code Administrator (acting as the Code Administrator of the CUSC) suggested such a CACOP amendment was not,

in the view of the member, in conflict with this. The member noted that, for example, this already applies in the BSC where Elexon is unable to raise, in its own name, a change to the BSC but rather requires the approval of the (BSC) Panel.

4.7 Six out of seven of the respondents to the Working Group Consultation agreed that explicit Panel approval to allow the Code Administrator to raise a particular CACOP amendment should be codified in the CUSC. The Ofgem representative pointed out that 'checks and balances' would naturally occur throughout the Proposal process, e.g. any change to the CACOP would require Authority approval before any CUSC change is raised; however the Working Group agreed that it was necessary to specifically codify this in the CUSC. In the third Working Group meeting, on 27<sup>th</sup> August 2010, the National Grid representative decided that due to the overwhelming support from both consultation respondents and Working Group members, they would not continue to oppose this argument and, therefore, the CUSC would codify that explicit Panel approval would be required before the (CUSC) Code Administrator raised any change proposal to the CACOP.

4.8 The Working Group agreed that it should consult the industry on the issues described above through a number of questions below:

**Q1. What are your views on the appointment process for an independent Panel Chairman?**

**Q2. What are your views on the appointment of a Deputy Panel Chairman? Should the situation arise, do you agree that a Deputy Panel Chairman should be chosen by those present at the Panel meeting or that a senior person from National Grid should be provided by The Company?**

**Q3. Where the Panel vote is split, do you believe the Panel Chairman should have freedom in using a casting vote for Self-governance Amendment Proposals or should they always vote for the status quo?**

**Q4. Do you agree that the Code Administrator should not be able to raise changes to the CACOP without explicit Panel approval?**

4.9 The Working Group conducted a page-turning exercise on the draft illustrative legal drafting on 14<sup>th</sup> July 2010. Minor errors were highlighted on numbering. In addition to the points noted above, the main points raised are as follows:

#### Section 8

- 8.4.1 - Agreed by group that the Panel Chairman should be appointed or re-appointed every 2 years after 30 September 2011
- 8.6.1 - Removal from office section needs to include Panel Chairman
- 8.7.5 – Add in text to formalise the deputy / alternate chair process
- 8.20.10 - Take out reference to "in accordance with the Code Administration Code of Practice" as it applies by default anyway
- 8.22.8 - insert 'such' and 'by the Code Administrator' into the sentence: "*such* consultation shall be conducted *by the Code Administrator*".
- 8.28.2. (f) and (g) – Add "via Elexon" after "each BSC Party" and consider deleting (g) as this would be difficult to adhere to.



## Section 11

- “WG Consultation Alternative Request” definition - Question raised on whether the acronym ‘WG’ should become ‘W’ as the term ‘Working Group’ has now been changed to ‘Workgroup’.

4.10 Final legal text was provided to the Working Group on 8<sup>th</sup> September 2010 and a further page-turning exercise was carried out by the Working Group on 15<sup>th</sup> September 2010. In addition to a few minor referencing and grammatical errors, the main points raised at this meeting were as follows:

## Section 8

- 8.1.1 – Add in caveat to make it clear that the CUSC will prevail in cases of inconsistencies between the CUSC and the CACOP.
- 8.5 - Include the Panel Chairman in the Term of Office paragraph.
- 8.20.10 – Take out reference to CACOP as this is specified at the beginning of Section 8.
- 8.22.4(a) - Same as above.
- 8.28.3 - Same as above.

## Section 11

No major points were raised regarding the changes made in relation to CAP185.

## **Summary of "original" CAP185 solution**

4.11 In summarising the Working Group's discussions of the Working Group Consultation responses, the Working Group chairman clarified the "original" CAP185 solution, as supported by the majority of Working Group members, as follows:

- Assistance is to be provided by the Code Administrator in its role as ‘Critical Friend’, particularly to small parties and consumer representatives, but essentially to all with an interest in the code modification process.
- The Code Administrator may propose changes to the Code of Practice which will be subject to Panel approval before seeking final approval by the Authority.
- A new, independent Panel Chairman will be appointed by 1<sup>st</sup> October 2011 and elections for this position will be held every 2 years after 30<sup>th</sup> September 2011. This appointment process will be determined via the GSG and will not be made explicit in CAP185. The appointment of a Deputy Panel Chair will also be determined via the GSG and will conform to the same levels of independence as the Panel Chairman.
- The Panel Chairman will retain the existing casting vote for matters other than the Panel Recommendation vote and will have an additional casting vote in the case of a deadlock when the Panel is taking the final decision on a Self-governance Amendment Proposal. However, this vote can only be cast (by the Panel Chairman, or his deputy in his absence) in favour of the status quo.

- Clarification that the existing provisions for withdrawal of an Amendment Proposal apply up to the point when the Panel makes its recommendation on the implementation of an Amendment Proposal.
- Change the terms 'Amendment Proposal' to 'CUSC Modification Proposal' and 'Working Group' to 'Workgroup' in order to align the terminology across the codes.

## **5.0 WORKING GROUP ALTERNATIVE AMENDMENT**

- 5.1 At the meeting on 27<sup>th</sup> August 2010, one Working Group Alternative Amendment (WGAA) was raised by E.ON UK, following finalisation of the original CAP185 solution by the Working Group. E.ON raised this WGAA in relation to the Panel Chairman having a casting vote for Self-governance Amendment Proposals (in every other respect the WGAA is identical to the original CAP185 Amendment Proposal). They felt that it was necessary to stipulate that where a split vote occurs in Self-governance Proposals, the Chair should have the freedom to have a casting vote, but that they are not allowed to abstain, in order to ensure that a decision is made. This was supported by another Working Group member. Full details of the WGAA are contained within Annex 4 to this report.
- 5.2 As only a minority of the Working Group supported the WGAA then it could not, according to the CUSC, be taken forward. However, in line with definition for a "Working Group Alternative Amendment" (as set out in Section 11 of the CUSC), the Working Group chairman gave consideration to the alternative proposal, noting that within the Working Group there has been valid and extensive discussion with regards to all options. The chairman concluded that it is appropriate to allow the industry further opportunity to comment on all the options through consultation by the Company and the full range of options should be available for the Authority's consideration. The chairman therefore exercised his right, in accordance with the CUSC, to take forward the WGAA, even though it only had minority support. The Working Group agreed that this seemed reasonable in the circumstances.

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

- 6.1 At the third Working Group meeting on 27<sup>th</sup> August 2010, the Working Group chairman undertook the Working Group vote on an assessment of the original CAP185 Amendment Proposal and the WGAA against the CUSC baseline and the Applicable CUSC Objectives. For ease of reference, the Applicable CUSC Objectives are reproduced below, with a summary of the three votes as set out in paragraph 15 of the standard CUSC Working Group Terms of Reference.
- 6.2 The Applicable CUSC Objectives are:
- (a) the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence;
  - (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.
- 6.3 The three rounds of voting for a Working Group are:

- Vote 1: whether each proposal better facilitates the Applicable CUSC Objectives;
  - Vote 2: where one or more WGAA's exist, whether each WGAA better facilitates the Applicable CUSC Objectives than the original Amendment Proposal;
  - Vote 3: which option is considered to BEST facilitate achievement of the Applicable CUSC Objectives. For the avoidance of doubt, this vote should include the existing CUSC baseline as an option.
- 6.4 The following tables summarise the results of the Working Group's voting, with details of each member's assessment against the Applicable CUSC Objectives and the rationale for such assessment. There were a maximum of six Working Group votes available at the meeting, with five voting Working Group members present and one Working Group member having been granted the vote of an absent Working Group member. For clarity, the Working Group chairman and the Authority representative do not have a vote, although the Working Group chairman has certain powers in relation to WGAA's which are discussed below.

6.5 Summary table of Working Group's votes.

<b>View against Applicable CUSC Objectives</b>	<b>Better than baseline</b>	<b>Not Better than baseline</b>	<b>Better than original</b>	<b>Better than WGAA</b>	<b>Best</b>
<b>Original</b>	6	0	-	4	4
<b>WGAA</b>	6	0	2	-	2
<b>Baseline</b>	-	-	0	0	0

6.6 **Vote 1 (a): Does CAP185 original better facilitate Applicable CUSC Objectives than CUSC baseline?**

<b>Objective</b>	<b>(a)</b>	<b>(b)</b>
Garth Graham	Yes, it demonstrably meets the licence requirements.	Neutral
Garth Graham on behalf of Fiona Navesey	Yes, it demonstrably meets the licence requirements.	Neutral
Steven Eyre	Yes, it demonstrably meets the licence requirements.	No comment
Stuart Cotten	Yes, it demonstrably meets the licence requirements.	No comment
Esther Sutton	Yes, it demonstrably meets the licence requirements.	Neutral
Alex Thomason (National Grid)	Yes, CAP185 seeks to implement our new licence obligations.	No comment

6.7 **Vote 1 (b): Does WGAA better facilitate Applicable CUSC Objectives than CUSC baseline?**

<b>Objective</b>	<b>(a)</b>	<b>(b)</b>
Garth Graham	Yes, it demonstrably meets the licence requirements	Neutral
Garth Graham on behalf of Fiona Navesey	Yes, it demonstrably meets the licence requirements	Neutral
Steven Eyre	Yes, agree with justification as set out in CAP185 proposal form	No comment
Stuart Cotten	Yes, agree with justification as set out in CAP185 proposal form	No comment
Esther Sutton	Yes, it demonstrably meets the licence requirements	Neutral.
Alex Thomason (National Grid)	Yes, CAP185 seeks to implement our new licence obligations	No comment

6.8 **Vote 2: Does the WGAA better facilitate Applicable CUSC Objectives than CAP185 original?**

<b>Objective</b>	<b>(a)</b>	<b>(b)</b>
Garth Graham	No, the original meets the licence requirements adequately	Neutral
Garth Graham on	No, the original meets the licence	Neutral

<b>Objective</b>	<b>(a)</b>	<b>(b)</b>
behalf of Fiona Navesey	requirements adequately	
Steven Eyre	Yes, as the Chair is independent and qualified enough to make a free decision	No comment
Stuart Cotten	No, as the licence does not stipulate the need for a free casting vote	No comment
Esther Sutton	Yes, as the final proposals suggest that a free casting vote is relevant and therefore if this is not implemented it could impede effective governance	No comment
Alex Thomason (National Grid)	Original is better as it effectively adheres to the licence requirements	No comment

In light of the Working Group majority preference for the original Amendment Proposal, the Working Group chairman used his powers under the CUSC to progress the WGAA, such that it could be considered by the Amendments Panel.

**6.9 Vote 3: Which option BEST facilitates achievement of the Applicable CUSC Objectives? (CAP185 original, WGAA or CUSC baseline)**

<b>WG Member</b>	<b>Best</b>
Garth Graham	Original, for the reasons set out above against applicable objective (a)
Garth Graham on behalf of Fiona Navesey	Original, for the reasons set out above against applicable objective (a)
Steven Eyre	WGAA, for the reasons set out above against applicable objective (a)
Stuart Cotten	Original, for the reasons set out above against applicable objective (a)
Esther Sutton	WGAA, for the reasons set out above against applicable objective (a)
Alex Thomason (National Grid)	Original, for the reasons set out above against applicable objective (a)

The Working Group voted, by majority, that the original CAP185 Amendment Proposal was BEST.

**7.0 PROPOSED IMPLEMENTATION**

7.1 The Working Group propose CAP185 should be implemented ten (10) Business Days after an Authority decision.

7.2 During the Working Group meeting to review the legal text on 15<sup>th</sup> September 2010, National Grid clarified a point on the implementation of the suite of Code Governance Review proposals. National Grid proposes to replicate the existing legal text contained within paragraph 8.23.6 which contains the transitional arrangements used for CAP160, the most recent significant Governance related CUSC Amendment Proposal implemented. The approach for CAP160 established a precedent that there would be a cut-off for new Amendment Proposals to make it clear which governance arrangements would apply to any given Amendment Proposal.

- 7.3 The transitional arrangements proposed for CAPs 183, 184, 185 and 188 are that any Amendment Proposal which has been raised and considered by the Amendments Panel at its first meeting to consider such proposal, prior to the implementation of CAPs 183, 184, 185 and 188, will follow the existing governance arrangements in force at the time they were raised. Any Amendment Proposal which is raised and first considered by the Amendments Panel after implementation of CAPs 183, 184, 185 and 188 (whichever is the latest to be implemented), will follow the revised governance arrangements introduced by that package of Amendment Proposals.
- 7.4 This approach will give clarity to any industry participant of the amendments process that will apply to any new Amendment Proposal raised during the period when CAPs 183, 184, 185 and 188 are being considered by the Authority and subsequently implemented (or rejected).

## **8.0 IMPACT ON THE CUSC**

- 8.1 CAP185 requires amendments to Section 8 of the CUSC for the Amendments Process and to Section 11 of the CUSC for Interpretation and Definitions. National Grid provided illustrative legal text to the Working Group for its review, including a change marked version of Sections 8 and 11 of the CUSC. For ease of reference, the illustrative legal text has been placed in a joint Volume 2 Working Group report for the Code Governance Review CUSC Amendment Proposals 183, 184, 185 and 188, available on our website at:  
<http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/workingstandin ggrou ps/wg/CodeGovernanceReview/>.
- 8.2 At the third Working Group meeting on 27<sup>th</sup> August 2010, National Grid confirmed that it was in the process of collating all comments on the illustrative legal text, including those from Working Group members and from Ofgem, and would provide an updated draft of the illustrative text to Working Group members for review alongside the draft Working Group report.
- 8.3 The Working Group reviewed the revised draft illustrative legal text, provided by National Grid on 8<sup>th</sup> September 2010, at a meeting on 15<sup>th</sup> September 2010. Comments provided by the Working Group were addressed by National Grid and the final illustrative legal text forms part of this Report submitted to the Panel by the Working Group.

## **9.0 IMPACT ON INDUSTRY DOCUMENTS**

### **Impact on Core Industry Documents**

- 9.1 Neither the Proposer nor the Working Group or Working Group Consultation respondents identified any impacts on Core Industry Documents.

### **Impact on other Industry Documents**

- 9.2 Neither the Proposer nor the Working Group or Working Group Consultation respondents identified any impacts on other Industry Documents, although the Proposer noted that a similar modification proposal would be raised to the Balancing and Settlement Code and the Uniform Network Code in due

course to meet the new requirements under the modified Transmission Licences.

## 10.0 WORKING GROUP VIEW / RECOMMENDATION

10.1 As described in section 6 above, the Working Group voted as follows:

<b>View against Applicable CUSC Objectives</b>	<b>Better than baseline</b>	<b>Not Better than baseline</b>	<b>Better than original</b>	<b>Better than WGAA</b>	<b>Best</b>
Original	6	0	-	4	4
WGAA	6	0	2	-	2
Baseline	-	-	0	0	0

10.2 The Working Group therefore recommends, by majority, that CAP185 original Amendment Proposal better facilitates the Applicable CUSC Objectives than the CUSC baseline or the WGAA and should be implemented.

10.3 The Working Group chairman, in reviewing the voting for the WGAA against the Applicable CUSC Objectives, noted that the majority of the Working Group did not consider that the WGAA better facilitated the Applicable CUSC Objectives than the original CAP185 Amendment Proposal. However, the Working Group chairman chose to exercise his power under the CUSC to put forward the WGAA to the Amendments Panel to be sent to industry consultation, as he considered that it did better facilitate the Applicable CUSC Objectives than the current version of the CUSC<sup>1</sup>.

## 11.0 NATIONAL GRID INITIAL VIEW

11.1 National Grid, as Proposer of CAP185, supports its implementation on the grounds that it better facilitates Applicable CUSC Objective (a, the efficient discharge by the licensee of its obligations imposed upon it under the Act and by this licence. CAP185 achieves this by implementing the licence modifications relating to the Code Administration Code of Practice, made in July 2010, within the CUSC.

11.2 National Grid recognises that E.ON UK has raised the Working Group Alternative Amendment to CAP185, as detailed in section 5 and Annex 4. National Grid considers that the WGAA better facilitates the Applicable CUSC Objectives than the CUSC baseline, but does not believe that the WGAA better facilitates the Applicable CUSC Objective than the CAP185 original proposal as the original effectively adheres to the licence modifications.

## 12.0 INDUSTRY VIEWS AND REPRESENTATIONS

### 12.1 Responses to the Working Group Consultation

12.1.1 The following table provides an overview of the representations received.

<sup>1</sup> "Working Group Alternative Amendment" is defined in Section 11 of the CUSC as: "An alternative amendment to the Amendment Proposal developed by the Working Group under the Working Group terms of reference (either as a result of a Working Group Consultation or otherwise) and which is believed by a majority of the members of the Working Group or by the chairman of the Working Group to better facilitate the Applicable CUSC Objectives than the Amendment Proposal or the current version of the CUSC".

Copies of the representations are contained in Working Group Report Volume 2.

Reference	Company	Supportive	Comments
CAP185-WGC-01	Centrica	Yes	<ul style="list-style-type: none"> <li>• Would like to see a fully transparent process for appointing a new Chair.</li> <li>• Do not have strong views on deputy but Panel members should be capable of fulfilling role and it is important to declare any conflicts of interest.</li> <li>• No comments on the use of a casting vote for the Chair.</li> <li>• Believe that Panel approval for changes to the CACOP would be a reasonable check and balance which can be easily implemented and should facilitate the Codes and Code of Practice remaining in step.</li> </ul>
CAP185-WGC-02	Drax Power Ltd	Yes	<ul style="list-style-type: none"> <li>• Appoint Chair in advance of 1<sup>st</sup> Oct 2011.</li> <li>• Determine process via GSG.</li> <li>• Senior person from NG where the Chairman is unavailable on the day.</li> <li>• Panel members could act as Deputy but should not be able to exercise their usual voting rights.</li> <li>• Sensible to use casting vote to vote for the status quo. Ensures that the lack of decisive support for change is recorded in the final report and that the appeal route remains open.</li> <li>• To make changes to the CACOP it is reasonable to codify an appropriate check that ensures the CA's interaction with the CACOP is in the interests of the Code.</li> </ul>
CAP185-WGC-03	EDF Energy	Yes	<ul style="list-style-type: none"> <li>• A new Chair should observe the Panel prior to Oct 2010.</li> <li>• Agree not to place appointment process in proposal.</li> <li>• A Deputy should be chosen by those present at the Panel and should not automatically be a senior person from NG.</li> <li>• Panel Chairman should have freedom to use a casting vote according to their independent judgement.</li> <li>• Panel approval for changes to the CACOP would act as a reasonable check and balance on the CA.</li> <li>• It is unclear whether this approach is consistent with the licence modifications and it should be considered further following legal advice.</li> </ul>
CAP185-WGC-04	E.ON UK	Yes	<ul style="list-style-type: none"> <li>• Agree with Oct 2011 timescale for Chair and debate process at GSG.</li> <li>• Deputy must not lose their right to vote – could pass to Alternate or could</li> </ul>



			<p>retain their vote.</p> <ul style="list-style-type: none"> <li>• Appointing a senior person from NG would resolve the above issue but concern that they might not be familiar with current issues.</li> <li>• Concerning the casting vote, it is most efficient to retain the status quo but stifles ability of chair to use their expert judgement and discretion.</li> <li>• The Panel should drive any changes to the CACOP, not the CA's.</li> </ul>
CAP185-WGC-05	SSE	Yes	<ul style="list-style-type: none"> <li>• Chair should be appointed using a robust process inc. head-hunting and interview by Panel sub-committee (CA Rep, Company Rep, 2 independent Panel members) who could then provide recommendations to the Panel to submit to the Authority.</li> <li>• Agree that appointing a senior person from NG for the Deputy role is the most pragmatic approach.</li> <li>• Problematic if appointed from Panel as voting right is lost.</li> <li>• The Panel Chairman should be bound by the CUSC to vote for the status quo, as the case for change has not been made.</li> <li>• Panel approval for changes to the CACOP should be placed in the Code. No Panel approval would place the CA in a conflict of interest situation which would not conform to the principles of good governance practice. It would act as a reasonable check and balance and comply with the existing principle in the BSC.</li> </ul>
CAP185-WGC-06	Wyre Power	Yes	<ul style="list-style-type: none"> <li>• 2 Panel Members form a sub-group and carry out appointment process for an Independent Chair in a transparent manner.</li> <li>• Panel members present should elect a Deputy when required to maintain continuity and reduce burden on The Company.</li> <li>• The Chair should exercise casting vote to maintain the status quo.</li> <li>• If the Chair has to vote on a self-governance proposal, then the proposal does not meet the criteria for self-governance as it will be a contentious issue.</li> <li>• The 'no change' approach better protects the stability of the CUSC regime and reduces risks.</li> <li>• If the CA raised changes to the CACOP, it may be to their benefit and not the benefit of CUSC parties. It should therefore not be in the power of the CA to raise a change without Panel agreement.</li> </ul>
CAP185-WGC-07	ScottishPower	Yes	<ul style="list-style-type: none"> <li>• No comment on appointment process for independent Chair. However, a</li> </ul>

			<p>Deputy should be chosen by the Panel, with vote passed to alternative and should be familiar with the current issues. If the Panel are unable to choose, then NG could be asked to provide a suitable alternative.</p> <ul style="list-style-type: none"><li>• The Chair should use their casting vote in favour of the status quo as the case for change has not been made sufficiently convincing by the proposer and therefore the change should not be made.</li><li>• As good practice the CA should discuss a proposed change with the Panel, but it is not necessary to gain explicit approval from the Panel as this conflicts with the CA's ability to propose change under principle 4 of the CACOP.</li></ul>
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12.1.2 No WG Consultation Alternative Requests were received.

## **12.2 Views of Panel Members**

12.2.1 No Panel Members responded to the Working Group Consultation in that capacity.

## **12.3 Views of Core Industry Document Owners**

12.3.1 No responses were received from Core Industry Document Owners.

## ANNEX 1 – PROPOSED LEGAL TEXT TO MODIFY THE CUSC

### Part A: Text to give effect to the Original Proposed Amendment

Please see Volume 2 of the Working Group report which contains the final draft of the illustrative legal text for Sections 8 and 11 of the CUSC as reviewed at the Working Group meeting on 15<sup>th</sup> September 2010, and a new Section of the CUSC for the Charging Methodologies, published on National Grid's website at the link below:

<http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/workingstandinggroups/wg/CodeGovernanceReview/>

The legal text has been produced as consolidated versions of the relevant CUSC sections, showing all changes for the suite of Code Governance Review Amendment Proposals for ease of review, as follows:

Section 8: CUSC Modification  
Section 11: Interpretation and Definitions

These two sections have been colour coded to show which individual Amendment Proposal the textual changes pertain to. The colour coding is as follows:

- Dark purple:** Significant Code Review (CAP183)
- Pale green:** Self-governance (CAP184)
- Turquoise:** Role of Code Administrator/CACOP (CAP185)
- Dark green:** Send Back (NB. This has been included for completeness; the proposed legal text against the existing baseline has been published with CAP186)
- Orange:** Environmental assessment (NB. This has been included for completeness; the proposed legal text against the existing baseline has been published with CAP187)
- Bright pink:** Governance of charging methodologies (CAP188)

Given the number of proposed changes in each of the sections, we have also produced a "clean" copy of each section which are also contained in volume 2.

Please note that the illustrative text currently contains a number of footnote references which have been used during drafting to cross-reference the textual changes to the relevant licence obligations. These footnotes do not form part of the proposed CUSC changes and will be removed prior to the final version of the text submitted to the Authority.

### Part B: Text to give effect to the Working Group Alternative Amendment

Please note that this proposed text is against the illustrative text as contained in Volume 2.

8.11.4 - The **Panel Chairman** shall not cast a vote as a **Panel Member** but shall have a casting vote on any matter (except in a **CUSC Modifications Panel Recommendation Vote**) where votes are otherwise cast equally in favour of and against the relevant motion; including, for the avoidance of doubt, in a **CUSC Modifications Panel Self-Governance Vote**, where the **Panel Chairman** is obliged to exercise his casting vote if votes are otherwise cast equally in favour of or against a **CUSC Modification Proposal**, but where any person other than the actual **Panel Chairman** or his alternate is acting as chairman he shall not have a casting vote.

## **ANNEX 2 – WORKING GROUP TERMS OF REFERENCE AND MEMBERSHIP**

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

#### **TERMS OF REFERENCE FOR CAP183, CAP184, CAP185 and CAP188 WORKING GROUP(S)**

##### **RESPONSIBILITIES**

1. The Working Group is responsible for assisting the CUSC Amendments Panel in the evaluation of the following CUSC Amendment Proposals tabled by National Grid Electricity Transmission plc at the special Amendments Panel meeting on 9<sup>th</sup> July 2010.
  - CAP183 - Code Governance Review: Significant Code Review
  - CAP184 – Code Governance Review: Self Governance
  - CAP185 – Code Governance Review: Role of Code Administrator and Code Administration Code of Practice
  - CAP188 – Code Governance Review: Governance of Charging Methodologies
2. The proposal(s) 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. For the avoidance of doubt, these additional provisions are set out in Condition C10, paragraph 6 of the Transmission Licence.

##### **SCOPE OF WORK**

4. The Working Group(s) must consider the issues raised by the Amendment Proposal(s) and consider if the proposal(s) identified better facilitates achievement of the Applicable CUSC Objectives.
5. In addition to the overriding requirement of paragraph 4, the Working Group(s) shall consider and report on the following specific issues.

##### **CAP183: Significant Code Review**

- Clarify when an SCR starts/ends;
- Clarify the role of the Amendments Panel in the exemption process;
- Clarify the arrangements for withdrawal and adoption of an Amendment Proposal resulting from an SCR direction;
- Review the illustrative legal drafting provided by National Grid for suitability.

#### **CAP184: Self-governance**

- Confirm that the Authority can direct an Amendment Proposal to the Self-governance process (as well as directing that it should not follow the Self-governance route);
- Consider the Amendments Panel process for reviewing which route an Amendment Proposal should follow (Significant Code review, standard or self-governance), such that the Panel does not have to undertake multiple assessments for each Proposal;
- Clarify the appeal routes applicable for self-governance, e.g. when is the Competition Commission appeal route applicable;
- Clarify the appeal criteria for assessment against the Applicable CUSC Objectives, with reference to "at least one of the CUSC objectives";
- Review the illustrative legal drafting provided by National Grid for suitability.

#### **CAP185: Role of Code Administrator and Code Administration Code of Practice**

- Clarify the future role of a "deputy chair" for the Amendments Panel; if the Panel Chairman is independent, who can undertake the role of deputy?;
- Confirm whether the requirement for the Code Administrator to seek the approval of the Amendments Panel prior to raising a change to the Code of Practice should be included within the CUSC;
- Review the illustrative legal drafting provided by National Grid for suitability.

#### **CAP188: Governance of Charging Methodologies**

- Clarify whether a proposal to change the Charging Methodologies has to be stand-alone or whether it can form part of a wider proposal to amend the CUSC;
- Consider "charging windows" (restriction to period for raising charging-related Amendment Proposals);
- National Grid to provide a change marked version of the existing charging methodologies for inclusion in the CUSC for review by the Working Group;
- Review the illustrative legal drafting provided by National Grid for suitability.

6. The Working Group(s) 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 or the current version of the CUSC, better facilitate achieving the Applicable CUSC Objectives in relation to the issue or defect identified.
7. The Working Group(s) should become conversant with the definition of Working Group Alternative Amendment 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 WGAA if the member(s) genuinely believes the WGAA would better facilitate the achievement of the Applicable CUSC Objectives, as compared with the Amendment Proposal or the current version of the CUSC. The extent of the support for the Amendment Proposal or any WGAA arising from the Working Group's discussions should be clearly described in the final Working Group Report to the CUSC Amendments Panel.
8. Working Group members should be mindful of efficiency and propose the fewest number of WGAAs possible.
9. All proposed WGAAs should include the Proposer(s)'s details within the final Working Group report, for the avoidance of doubt this includes WGAAs which are proposed by the entire Working Group or subset of members.
10. There is an obligation on the Working Group to undertake a period of Consultation in accordance with CUSC 8.17. The Working Group Consultation period shall be for a period of three weeks as determined by the Amendments Panel.

11. Following the Consultation period the Working Group is required to consider all responses including any WG Consultation Alternative Requests. In undertaking an assessment of any WG Consultation Alternative Request, the Working Group should consider whether it better facilitates the Applicable CUSC Objectives than the current version of the CUSC.

As appropriate, the Working Group will be required to undertake any further analysis and update the original Amendment Proposal and/or WGAA's. All responses including any WG Consultation Alternative Requests shall be included within the final report including a summary of the Working Group's deliberations and conclusions. The report should make it clear where and why the Working Group chairman has exercised his right under the CUSC to progress a WG Consultation Alternative Request or a WGAA against the majority views of Working Group members. It should also be explicitly stated where, under these circumstances, the Working Group chairman is employed by the same organisation who submitted the WG Consultation Alternative Request.

12. The Working Group is to submit its final report to the Amendments Panel Secretary on for circulation to Panel Members. The final report conclusions will be presented to the Amendments Panel meeting on 29<sup>th</sup> October 2010.

## MEMBERSHIP

13. The following individuals have nominated themselves to be Working Group members:

Role	Name	Representing
Chairman	David Smith	National Grid
National Grid Representative*	Steve Lam Emma Clark Alex Thomason	National Grid
Industry Representatives*	Garth Graham	SSE
	Stuart Cotten	Drax Power Ltd
	Esther Sutton	E.ON UK plc
	Paul Mott	EDF Energy
	Fiona Navesey	Centrica Energy
	Steven Eyre	EDF Energy
Authority Representative	Jon Dixon	Ofgem
Technical Secretary	Ben Smith	National Grid
Observers		

NB: A Working Group must comprise at least 5 members (who may be Panel Members). The roles identified with an asterisk in the table above contribute toward the required quorum, determined in accordance with paragraph 14 below.

14. The chairman of the Working Group and the Amendments Panel Chairman must agree a number that will be quorum for each Working Group meeting. The agreed figure for CAPs 183, 184, 185 and 188 is that at least five Working Group members must participate in a meeting for quorum to be met. At the Amendments Panel meeting on 9<sup>th</sup> July 2010, the Panel noted the limited number of Working Group members and agreed in principle that progress of the Working Group(s) should not be halted should a meeting of the Working Group(s) not be quorate.
15. A vote is to take place by all eligible Working Group members on the Amendment Proposal and each WGAA. The vote shall be decided by simple majority of those present at the meeting at which the vote takes place (whether in person or by teleconference). The Working Group chairman shall not have a vote, casting or otherwise. There may be up to three rounds of voting, as follows:

- Vote 1: whether each proposal better facilitates the Applicable CUSC Objectives;
- Vote 2: where one or more WGAAAs exist, whether each WGAA better facilitates the Applicable CUSC Objectives than the original Amendment Proposal;
- Vote 3: which option is considered to BEST facilitate achievement of the Applicable CUSC Objectives. For the avoidance of doubt, this vote should include the existing CUSC baseline as an option.

The results from the vote and the reasons for such voting shall be recorded in the Working Group report in as much detail as practicable.

16. It is expected that Working Group members would only abstain from voting under limited circumstances, for example where a member feels that a proposal has been insufficiently developed. Where a member has such concerns, they should raise these with the Working Group chairman at the earliest possible opportunity and certainly before the Working Group vote takes place. Where abstention occurs, the reason should be recorded in the Working Group report.
17. Working Group members or their appointed alternate are required to attend a minimum of 50% of the Working Group meetings to be eligible to participate in the Working Group vote.
18. The Technical Secretary shall keep an Attendance Record for the Working Group meetings and circulate the Attendance Record with the Action Notes after each meeting. This will be attached to the final Working Group report.
19. The Working Group membership can be amended from time to time by the CUSC Amendments Panel.

#### **RELATIONSHIP WITH AMENDMENTS PANEL**

20. 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 Amendments Panel Secretary.
21. The Working Group shall seek the Amendments Panel's advice if a significant issue is raised during the Consultation process which would require a second period of Consultation in accordance with 8.17.17 of the CUSC.
22. 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 Amendments Panel Secretary.

#### **MEETINGS**

23. 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**

24. The Working Group chairman shall prepare a final report for the October 2010 Amendments Panel meeting, responding to the matters set out in the Terms of Reference, including all Working Group Consultation Responses and Alternative Requests.
25. A draft Working Group report must be circulated to Working Group members with not less than five Business Days given for comments, unless all Working Group members agree to three Business Days.

26. Any unresolved comments within the Working Group must be reflected in the final Working Group report.
27. The chairman (or another member nominated by him) will present the Working Group report to the Amendments Panel as required.

### Appendix 1: Indicative Working Group(s) Timetable

Please note this timetable has been updated to reflect the additional initial Working Group meeting held on 21<sup>st</sup> July 2010 and consequential delays to the timetable.

9 <sup>th</sup> July 2010	Special Amendments Panel meeting – agree Working Group Terms of Reference
14 <sup>th</sup> July 2010	First Working Group meeting
21 <sup>st</sup> July 2010	Second Working Group meeting (teleconference)
4 <sup>th</sup> August 2010	Publish Working Group consultations (for three weeks)
25 <sup>th</sup> August 2010	Deadline for Working Group consultation responses
27 <sup>th</sup> August 2010	Post-consultation Working Group meeting (to review consultation responses, confirm any alternatives and undertake Working Group vote)
* 3 <sup>rd</sup> Sept 2010	Publish draft Working Group reports for comment
* 10 <sup>th</sup> Sept 2010	Deadline for comments on Working Group reports
* 16 <sup>th</sup> Sept 2010	Publish final Working Group reports (5 Working Days' notice to Panel)
* 24 <sup>th</sup> Sept 2010	Amendments Panel meeting to discuss Working Group reports (an additional "special" Panel meeting was previously proposed)
* 27 <sup>th</sup> Sept 2010	Issue industry consultations (for two weeks)
* 11 <sup>th</sup> Oct 2010	Deadline for industry responses
* 13 <sup>th</sup> Oct 2010	Draft Amendment Reports published for industry comment
* 20 <sup>th</sup> Oct 2010	Deadline for industry comment
* 21 <sup>st</sup> Oct 2010	Draft Amendment Reports published prior to Panel Recommendation Vote (with Panel papers)
* 29 <sup>th</sup> Oct 2010	Amendments Panel meeting – Panel Recommendation Vote
* 5 <sup>th</sup> Nov 2010	Send final Amendments Reports to Authority
* 10 <sup>th</sup> Dec 2010	Indicative Authority decision date (25 Working Day KPI)
* 24 <sup>th</sup> Dec 2010	Indicative implementation date (10 Working Days after Authority decision)

*\* These dates are based on the premise that no WG Consultation Alternative Requests are made. Should further work be required to consider WG Consultation Alternative Requests or WGAAAs, this part of the process may be delayed and a further extension to the report submission deadline to the Amendments Panel meeting may be required.*



## ANNEX 3 – AMENDMENT PROPOSAL FORM

<b>CUSC Amendment Proposal Form</b>	<b>CAP: 185</b>
Title of Amendment Proposal:	
<b>Code Governance Review: Role of Code Administrator and Code Administration Code of Practice</b>	
Description of the Proposed Amendment ( <i>mandatory by proposer</i> ):	
<p>This Amendment Proposal is part of a series of proposals raised by National Grid to implement the Final Proposals of the wider Code Governance Review which was initiated by Ofgem in November 2007. The review sought to address concerns that the existing code arrangements may be too complex and inaccessible to smaller market participants. Given the Authority's evolving role with the introduction of additional statutory duties and the right of appeal to the Competition Commission, such a review was considered to be conducted at an appropriate time.</p> <p>Ofgem published its Final Proposals for the Code Governance Review in March 2010, followed by its statutory consultation on licence modifications on 3<sup>rd</sup> June 2010. National Grid Electricity Transmission plc has not objected to the licence modifications.</p> <p>As part of the suite of work strands conducted during the Code Governance Review, one of the areas reviewed was the Role of Code Administrator and the creation of a Code Administration Code of Practice (CACOP). Ofgem's Final Proposals seek to enable the Code Administrator to assist parties and adhere to the principles contained within the CACOP. The CACOP was developed by Code Administrators, with input from code users and Ofgem, in order to establish best practice for code administration and to encourage participation from those involved in the energy industry who may not be code users. The CACOP states that "<i>where inconsistencies or conflicts exist between the relevant codes and this Code of Practice, the relevant code shall take precedence, though it is anticipated that licensees and other code parties will take all reasonable steps to ensure the two are aligned.</i>" The approved CACOP was published by Ofgem on 3 June 2010 and is available on its website at: <a href="http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/Pages/GCR.aspx">http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/Pages/GCR.aspx</a>.</p> <p>There are a number of changes required to the CUSC as a result of the licence modifications. Some refer to the requirement to establish an administrative body (the "code administrator") and set out its duties and functions; others relate to the requirement for the Code Administrator to maintain, publish, review and amend the CACOP. The specific amendments are summarised below:</p> <ul style="list-style-type: none"> <li>• Amend Section 8 to reflect the assistance to be provided by the Code Administrator in its role as "Critical Friend", namely to provide support to all with an interest in the CUSC Amendment process and in particular to assist small parties and consumer representatives as set out in the licence modifications. This is to require the Code Administrator's assistance with drafting an Amendment Proposal, understanding the operation of the CUSC and supporting other parties' involvement in the amendments processes. It is considered that this will make the CUSC amendment process more robust.</li> <li>• The CUSC needs to recognise the existence of the CACOP which will be reviewed periodically and may be amended with the Authority approving any proposed changes. A working practice is proposed that the Code Administrator will discuss any changes that it proposes to raise to the Code of Practice with the Panel prior to raising them; however as the CACOP change process sits within that document and not within the CUSC, this does not form part of this Amendment Proposal.</li> <li>• The CUSC will need to be amended to stipulate that the person appointed as the Amendments Panel Chairman shall be independent of the relevant licensee (National Grid Electricity Transmission plc) and the appointment will be subject to approval by the Authority. The current Panel Chairman was re-appointed in March 2010, with the term of office due to expire on 30 March 2013. Following industry feedback, we propose that a new "independent" Panel Chairman</li> </ul>	

be appointed within the same timescales as the next election for Users' Panel Members in 2011, such that a new Panel Chairman would be appointed from 1 October 2011.

- The Panel Chairman will retain the existing casting vote for matters other than the Panel Recommendation Vote, and will have an additional casting vote in the case of a deadlock when the Panel is taking the final decision on a Self-Governance Amendment proposal. The reason for the casting vote in the case of self-governance is to ensure that a route to a Competition Commission appeal remains. In the case of a Panel Recommendation, a casting vote is not necessary, Chair may not have a casting vote in the case of a recommendation, which can legitimately reflect a split vote without hindering the ongoing progress of a proposal; it will simply be recorded as such in the modification report to the Authority.
- Amend the CUSC to clarify that the existing provisions for withdrawal of an Amendment Proposal within the CUSC apply up to the point when the Panel makes its recommendation on whether an Amendment Proposal should be implemented. This retains the existing principle of Proposer ownership; aligns the withdrawal provisions in the CUSC to the principles set out in the approved CACOP, while also providing additional clarity to the CUSC in this area.
- Align the terminology used to refer to the modification process across all the codes, in line with the principle within the CACOP. The term 'Amendment Proposal' currently used in the CUSC will be changed to 'CUSC Modification Proposal' and the term 'Working Group' will become 'Workgroup', requiring changes to the CUSC where this terminology is used.

Description of Issue or Defect that Proposed Amendment seeks to Address (**mandatory by proposer**):

The Code Governance Review Final Proposals seek to implement revised duties for Code Administrators and create the Code Administration Code of Practice to improve the existing code arrangements by implementing best practice and to ensure that code administrators act in a manner consistent with the Code of Practice principles.

This forms part of the licence modifications which National Grid Electricity Transmission plc has not objected to and is therefore mandated to implement through changes to the CUSC.

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

Revisions are required to Section 8 of the CUSC for the Amendment process and to Section 11 of the CUSC for definitions.

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

None anticipated

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

None anticipated

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

National Grid intends to raise similar proposals to both the BSC and the UNC, in line with the timetable which has been published to the industry in June 2010.

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

National Grid considers that implementation of this Amendment Proposal would better facilitate the following Applicable CUSC Objective:

(a): "the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence", specifically with regard to the obligation under standard condition C10 of the licence.

This is a mandatory requirement under the new Licence Modifications which National Grid Electricity Transmission plc has not objected to.

<b>Details of Proposer:</b> Organisation's Name:	National Grid Electricity Transmission plc
Capacity in which the Amendment is being proposed:  (i.e. CUSC Party, BSC Party or "National Consumer Council")	CUSC Party
<b>Details of Proposer's Representative:</b> Name: Organisation: Telephone Number: Email Address:	Emma Clark National Grid Electricity Transmission plc 01926 655223 <a href="mailto:emma.clark@uk.ngrid.com">emma.clark@uk.ngrid.com</a>
<b>Details of Representative's Alternate:</b> Name: Organisation: Telephone Number: Email Address:	Alex Thomason National Grid Electricity Transmission plc 01926 656379 <a href="mailto:Alex.thomason@uk.ngrid.com">Alex.thomason@uk.ngrid.com</a>
<b>Attachments: No</b>	

**Notes:**

1. Those wishing to propose an Amendment to the CUSC should do so by filling in this "Amendment Proposal Form" that is based on the provisions contained in Section 8.15 of the CUSC. The form seeks to ascertain details about the Amendment Proposal so that the Amendments Panel can determine more clearly whether the proposal should be considered by a Working Group or go straight to wider National Grid Consultation.
2. The Panel Secretary will check that the form has been completed, in accordance with the requirements of the CUSC, prior to submitting it to the Panel. If the Panel Secretary accepts the Amendment Proposal form as complete, then he will write back to the Proposer informing him of the reference number for the Amendment Proposal and the date on which the Proposal will be considered by the Panel. If, in the opinion of the Panel Secretary, the form fails to provide the information required in the CUSC, then he may reject the Proposal. The Panel Secretary will inform the Proposer of the rejection and report the matter to the Panel at their

next meeting. The Panel can reverse the Panel Secretary's decision and if this happens the Panel Secretary will inform the Proposer.

The completed form should be returned to:

Steven Lam  
Commercial  
National Grid  
National Grid House  
Warwick Technology Park  
Gallows Hill  
Warwick  
CV34 6DA

Or via e-mail to: [steven.lam@uk.ngrid.com](mailto:steven.lam@uk.ngrid.com)

(Participants submitting this form by email will need to send a statement to the effect that the proposer acknowledges that on acceptance of the proposal for consideration by the Amendments Panel, a proposer which is not a CUSC Party shall grant a licence in accordance with Paragraph 8.15.7 of the CUSC. A Proposer that is a CUSC Party shall be deemed to have granted this Licence).

3. Applicable CUSC Objectives\*\* - These are defined within the National Grid Electricity Transmission plc Licence under Standard Condition C10, paragraph 1. Reference should be made to this section when considering a proposed amendment.

## **ANNEX 4 - WORKING GROUP ALTERNATIVE AMENDMENT**

The Working Group Alternative Amendment was proposed by E.ON UK at the Working Group meeting on 27<sup>th</sup> August 2010. It is identical to the original CAP185 Amendment Proposal in every respect except with regard to the Panel Chairman's vote where the Panel is tied on Self-governance Amendment Proposals.

### **WGAA1**

#### **Raised by E.ON UK**

The Amendments Panel Chairman should have freedom in using a casting vote for Self-governance Amendment Proposals where the vote is tied, but this vote must be used in order to ensure that a decision is reached and therefore they are not allowed to abstain from voting. This allows for the route of appeal to remain open.

## ANNEX 5 – WORKING GROUP ATTENDANCE REGISTER

Name	Organisation	Role	14/07/10	21/07/10	27/08/10	15/09/10 (legal text page-turning)
David Smith	National Grid	Chairman	Yes	Yes	Yes	No
Ben Smith	National Grid	Technical Secretary	Yes	Yes	No	No
Emma Clark	National Grid	National Grid representative (CAP185)	Yes	No	Yes	Yes
Steve Lam	National Grid	National Grid representative (CAP183/184)	Yes	Yes	Yes	Yes
Alex Thomason	National Grid	National Grid representative (CAP188)	Yes	Yes	Yes	Yes
Garth Graham	SSE	Working Group Member	Yes	Yes	Yes	Yes
Stuart Cotten	Drax Power	Working Group Member	Yes	Yes (via teleconference)	Yes	No
Esther Sutton	E.ON UK	Working Group Member	Yes	Yes (via teleconference)	Yes (via teleconference)	Yes
Paul Mott	EDF Energy	Working Group Member	Yes	Yes (via teleconference)	No	No
Steven Eyre	EDF Energy	Working Group Member	No	No	Yes	Yes
Fiona Navesey	Centrica Energy	Working Group Member	Yes	Yes – part meeting (via teleconference)	No (GG acted as alternate)	No
Jon Dixon	Ofgem	Authority representative	Yes	Yes - part meeting (via teleconference)	No	Yes
Abid Sheikh	Ofgem	Authority representative	No	No	Yes (via teleconference)	No