



AMENDMENT REPORT VOLUME 1

CUSC Amendment Proposal CAP188

Code Governance Review: Governance of Charging Methodologies

The purpose of this document is to assist the Authority in their decision whether to implement Amendment Proposal CAP188.

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I DOCUMENT CONTROL

a National Grid Document Control

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Name	Organisation
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CUSC Parties	Various
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1.0 SUMMARY AND RECOMMENDATIONS

Executive Summary

- 1.1 CAP188 - "Code Governance Review: Governance of Charging Methodologies" was raised by National Grid Electricity Transmission plc and submitted to a special meeting of the Amendments Panel on 9th July 2010. CAP188 is part of a series of proposals which seek to implement the final proposals of Ofgem's Code Governance Review which were published on 31st March 2010 and which were implemented via a series of modifications to the Transmission and Distribution Licences from 5th July 2010.
- 1.2 CAP188 seeks to amend the CUSC to create a new Section in which to include the existing Use of System and Connection Charging Methodologies. The methodologies, once they become part of the CUSC, would be subject to the CUSC governance arrangements, and thus be subject to change via the amendment process. In addition, CAP188 seeks to create a new category of "materially affected party" which would be permitted to raise changes to the two Charging Methodologies, in line with the new Licence requirements. Finally, CAP188 would amend the CUSC to reflect the existence of the Transmission Charging Methodologies Forum (TCMF) and to allow the Amendments Panel to take ownership of its terms of reference. 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 14th July 2010. Following discussions at that meeting the Working Group held a second meeting on 21st July 2010 before proceeding to Working Group Consultation. A third Working Group meeting was held on 27th August 2010 to discuss the responses, agree any Working Group Alternative Amendments (WGAA) and hold the Working Group vote. A fourth meeting was held by teleconference on 15th September 2010 to discuss the revised draft illustrative legal text, provided by National Grid on 8th September 2010.
- 1.4 A WGAA was raised by National Grid Electricity Transmission plc at the meeting on 27th August 2010. National Grid raised the WGAA to reflect its preferences following the Working Group agreeing the final solution for the CAP188 Amendment Proposal at that meeting. The full detail of the finalised CAP188 original Amendment Proposal solution and the WGAA can be found in Annex 6 to this report.

Working Group Recommendation

- 1.5 The Working Group recommended, by majority, that CAP188 original proposal should be implemented. 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 sections 6 and 10 of this report.

View against Applicable CUSC Objectives	Better than baseline	Not Better than baseline	Better than original	Better than WGAA	Best
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Original	6	0	-	5	5
WGAA	6	0	1	-	1
Baseline	-	-	0	0	0

Summary of Working Group Consultation Responses

- 1.7 Seven responses were received to the Working Group Consultation, six of which supported CAP188 (one was silent), with no requests for a Working Group Consultation Alternative. Further detail is provided in section 10 of this report.

Amendments Panel Recommendation

- 1.8 At the Amendments Panel meeting on 29th October 2010, eight Panel Members voted unanimously that both CAP188 original Amendment Proposal and the WGAA better facilitate the Applicable CUSC Objectives than the CUSC baseline. The Panel voted by a majority of 7 votes to 1 that the CAP188 original Amendment Proposal best facilitates the Applicable CUSC Objectives overall. Full details of the Panel's voting are provided in section 11 of this report.

National Grid Recommendation

- 1.9 National Grid, as Proposer of both CAP188 and the WGAA, believes that both proposals better facilitate Applicable CUSC Objective (a) as they provide for a more efficient modification process for the Charging Methodologies. Both proposals also implement National Grid's licence obligations. National Grid also believes there could be benefits to competition under Applicable CUSC Objective (b). However, National Grid's overall recommendation is that the WGAA better facilitates Applicable CUSC Objective (a) than the "original" CAP188 solution and that the WGAA be implemented. National Grid's justification is set out in more detail in section 12 of this document.

2.0 PURPOSE AND INTRODUCTION

- 2.1 This Amendment Report has been prepared and issued by National Grid under the rules and procedures specified in the Connection and Use of System Code (CUSC) as designated by the Secretary of State.
- 2.2 Further to the submission of Amendment Proposal CAP188, the Working Group consultation and the subsequent wider industry consultation that was undertaken by National Grid, this document is addressed and furnished to the Gas and Electricity Markets Authority ("the Authority") in order to assist them in their decision whether to implement Amendment Proposal CAP188 or the Working Group Alternative Amendment.
- 2.3 CAP188 was proposed by National Grid Electricity Transmission plc and submitted to the Amendments Panel for their consideration on 9th 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. The CAP188 Working Group report was submitted to

- 2.4 This document outlines the discussions held by the Working Group, the responses to the Working Group Consultation and the Company consultation, and the nature of the CUSC changes that are proposed. It incorporates National Grid's recommendations to the Authority concerning the Amendment Proposal and the Working Group Alternative Amendment. Copies of all representations received in response to the Working Group Consultation and the Company consultation have been also been included and a 'summary' of the representations received is also provided. Copies of each of the responses to the consultations are included as Volume 2 to this document.
- 2.5 This Amendment Report has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid Website at www.nationalgrid.com/uk/Electricity/Codes/ along with the Company Consultation document, Working Group Report and the Amendment Proposal Form for CAP188.

3.0 PROPOSED AMENDMENT

- 3.1 CAP188 seeks to implement the Code Governance Review final proposals and meet the new requirements under the modified electricity Transmission Licence. The first part of the proposal is to amend the CUSC to create a new section in which to include the existing Use of System and Connection Charging Methodologies. These two separate methodologies currently exist within two documents published by National Grid: "The Statement of the Connection Charging Methodology" and "The Statement of the Use of System Charging Methodology". The methodologies themselves will not be amended prior to their inclusion within the CUSC. However, the existing Charging Methodology Statements contain introductory sections which would not make sense once these documents are included within the CUSC. National Grid provided an illustrative version of the two methodologies as they might appear within the CUSC just prior to the second Working Group meeting on 21st July 2010 and there was not enough time to review them in detail at the meeting.
- 3.2 Once the two methodologies are included within the CUSC, they would be subject to the CUSC governance arrangements in force, as amended from time to time. This means that both methodologies would be subject to change via the CUSC Amendment process.
- 3.3 CAP188 also seeks to create a new category of "materially affected party" within the CUSC to reflect the final proposals and the new Licence obligations. A "materially affected party" would need to be designated as such by the Authority; in order to achieve this designation, they would need to prove that they are materially affected by either or both of the Charging Methodologies and that they wish to raise a change to them. Ofgem has indicated during industry discussions on the governance of the Charging Methodologies that such designation could either be enduring or time limited and that each request for designation (as a "materially affected party") would be dealt with on a case by case basis.
- 3.4 The final element of CAP188 is to amend the CUSC to reflect the existence of the Transmission Charging Methodologies Forum (TCMF). This is another Licence requirement which has been implemented in order to ensure that the TCMF (both in electricity and gas, transmission and distribution) continues to

provide the benefit that the industry receives from this body. CAP188 seeks to allow the Amendments Panel to take ownership of the TCMF's Terms of Reference, although the TCMF will continue to be chaired and administered by National Grid. CAP188 makes a distinction between the role of the TCMF, which is to continue as an informal discussion forum, and the potential role for a Charging Standing Group, which could be established under CUSC governance and could fulfil a more formal role; the latter would require members to be nominated and approved in line with the established CUSC processes.

4.0 SUMMARY OF WORKING GROUP DISCUSSIONS

Presentation of Amendment Proposal

- 4.1 The first Working Group meeting was held on 14th July 2010. The National Grid representative, as Proposer of CAP188, gave a presentation of the Amendment Proposal, as described above. She highlighted that the concept of "charging windows", as consulted on by Ofgem as part of its Code Governance Review Initial Proposals, is not included as part of the CUSC Amendment Proposal. "Charging windows" were initially proposed by Ofgem as a period of time during any given year during which proposals to change the Charging Methodologies could be raised, although did not form part of the final licence proposals. Ofgem considered that they could be used as a mitigation measure against the potentially high volume of Charging Methodology change proposals that the industry could be faced with when the open governance arrangements are implemented.
- 4.2 The National Grid representative explained that CAP188 does not include "charging windows" as National Grid considers that restricting the period in which Amendment Proposals can be raised would not be beneficial; instead it would be better to manage the volume of change through the existing Panel prioritisation process. She also noted that careful planning of implementation timescales should assist change Proposers and the industry in general in planning for changes to the two Charging Methodologies.
- 4.3 The National Grid representative considered that CAP188 better facilitates Applicable CUSC Objective (a), the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence, specifically by amending the CUSC to fulfil the new licence or revised obligations placed on National Grid under standard conditions C5, C6 and C10 of its electricity Transmission Licence.

Working Group Terms of Reference

- 4.4 The Working Group agreed the Terms of Reference for CAP188 and did not suggest any additional items for inclusion. The Working Group then proceeded to complete the actions assigned to it under the Terms of Reference, as follows:
- 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.

Charging Methodology Amendment Proposals

- 4.5 The National Grid representative provided background to this issue, explaining that during the 9th July 2010 Amendments Panel meeting and the June/July Code Governance Review workshops, differing views were expressed regarding raising a Charging Methodology Amendment Proposal once the two Charging Methodologies are included within the CUSC. There are two general schools of thought, as set out below.
- 4.6 The first approach is a holistic one which would allow parties to raise one single Amendment Proposal to the CUSC which could cover both the existing Sections of the CUSC and the two Charging Methodologies (which would be in a new Section of the CUSC). Hence, one CUSC Amendment Proposal could incorporate changes to, for example, the provisions around 'Use of System' in Section 3 of the CUSC, in addition to a change to the 'Use of System Charging Methodology' in the new Section to the CUSC. This approach was considered to have a number of benefits:
- Transparency: allowing the industry and Panel Members to see the potential full impacts of related changes in one place;
 - Efficiency: enabling one Working Group to consider all the issues together, instead of adopting a piecemeal approach to the different elements, could reduce the number of meetings and resources required and speed up the change process.
- 4.7 The second approach splits out the Charging Methodologies from the rest of the CUSC with regard to raising Amendments Proposals. For the avoidance of doubt, they still reside in a new Section of the CUSC. Using the example above, this would mean that two separate Amendment Proposals would need to be raised: one Amendment Proposal to the 'Use of System' provisions in Section 3 of the CUSC and a second Amendment Proposal to the 'Use of System Charging Methodology'.
- 4.8 The rationale for this approach stems from a number of Licence obligations relating to Charging Methodologies. The first is the new obligation (to be brought into effect with this CAP188 proposal) to allow Charging Methodology change proposals to be raised by "materially affected parties". Given that CUSC Parties, BSC Parties and the National Consumer Council would have the right to raise Amendment Proposals to the Charging Methodologies, a materially affected party would be someone not covered by those categories and has to be designated by the Authority. In order to gain such designation, the party would have to prove to the Authority that it is materially affected by the charging methodologies and that it wishes to raise a change proposal. The reason this could not be covered by the holistic (first) approach above is that the designation described in the Licence is restricted to Amendment Proposals to the Charging Methodologies only. Thus, in the example above, CUSC Parties, BSC Parties and the National Consumer Council could raise changes to both the 'Use of System' provisions in Section 3 of the CUSC and the 'Use of System Charging Methodology'. However, a "materially affected party" could only raise a

change to the 'Use of System Charging Methodology'. They could not propose a change to the 'Use of System' provisions in Section 3 of the CUSC. Having a different approach between Amendment Proposals from the CUSC Parties, BSC Parties and the National Consumer Council and those from a "materially affected party" (with – in the first approach - one group being able to raise a single Amendment Proposal covering both the 'Use of System' provisions in Section 3 of the CUSC and the 'Use of System Charging Methodology', and the other group limited to just raising an Amendment Proposal to the 'Use of System Charging Methodology') might be considered unduly discriminatory.

- 4.9 The other element of the Licence which parties considered supports the second approach is the differing "relevant applicable objectives" within the Transmission Licence. When the Amendments Panel makes its recommendation to the Authority with regard to implementation of an Amendment Proposal, it does so by providing its views as to whether the Amendment Proposal better facilitates the Applicable CUSC Objectives than the baseline version of the CUSC. Prior to implementation of the Code Governance Review, the Transmission Licence set out three different sets of Applicable Objectives; one set each for the CUSC ("Applicable CUSC Objectives"), the Use of System Charging Methodology and the Connection Charging Methodology ("relevant objectives"). Thus there are two Applicable CUSC Objectives, three relevant objectives for the Use of System Charging Methodology and four relevant objectives for the Connection Charging Methodology. Whilst similar in nature, there are differences between these nine different objectives. The Licence modifications related to open governance of the Charging Methodologies, which were made in July 2010, brought the three sets of objectives together under one definition in the Licence, as follows:

"applicable CUSC objectives" means:

a. in relation to a proposed modification of the modification procedures only, the requirements of paragraph 6 (to the extent that they do not conflict with the objectives set out in paragraph 1);

aa. in relation to a proposed modification of the charging methodologies only, the objectives (as applicable) set out at:

(i) paragraph 5 of standard condition C5 in relation to the use of system charging methodology; and

(ii) paragraph 11 of standard condition C6 in relation to the connection charging methodology, and

b. in relation to any other proposed modification, the objectives set out in paragraph 1.

The supporters of the second approach believed that the Licence references above, to different objectives for proposed modifications to different elements of the CUSC, meant that the Panel would need to consider each of those elements in isolation; this meant, in the example used above, that two separate (but related) Amendment Proposals would be required; one addressing the 'Use of System' provisions in Section 3 the other the 'Use of System Charging Methodology'. It was noted that this was very similar to the approach adopted by the CUSC Amendments Panel for the suite of

'Transmission Access Review' (TAR) changes developed in 2008-9, where separate Working Groups considered the CUSC and the (related) Charging Methodology changes, with a number of members sitting on both groups.

- 4.10 The Working Group debated the merits of the two approaches but did not reach agreement as to which the "right" approach should be. One Working Group member requested that National Grid should seek legal advice, on behalf of the Working Group, as to which of the two approaches was the most legally robust, given the potential confusion caused by the revised Licence drafting above. The Working Group member explained the importance of implementing the correct process from the outset, noting that future Charging Methodology Amendment Proposals could have the potential to result in significant financial wins or losses to individual organisations. Should an organisation face significant losses, the Working Group member considered that such organisations may seek to challenge the outcome of the change and that the logical place to start would be any weaknesses in the underlying processes set out in the CUSC. The Working Group member explained that if, for example, it was decided that the first approach, as described in paragraph 4.6, was the one to be adopted for the CUSC (as the CAP188 'solution') and, after a successful legal challenge, it was determined that it should actually have been the second approach, as described in paragraph 4.7, (or vice versa) then not only would the change that had been the subject of the legal challenge be called into question, but so too could any CUSC Amendment Proposals taken forward up to that time using the new approach. In this scenario there could potentially be significant ramifications for the industry, the Licensee and the Authority. The Working Group agreed to ask for the industry's views on their preferred approach:

Charging Windows

- 4.11 "Charging windows" were discussed at the second Working Group meeting on 21st July 2010. The National Grid representative summarised the background of "charging windows", explaining that Ofgem had included the concept within its Code Governance Review Initial Proposals consultation in 2009, as described in paragraph 4.1 above. She reiterated that National Grid had not included them within CAP188 as it could not see a benefit in restricting the period during which Charging Methodology Amendment Proposals could be raised. If a large volume of changes were raised from the outset of open governance, National Grid, as Code Administrator, and the Amendments Panel would need to manage the CUSC Amendments process, but National Grid considers this can be done without imposing time restrictions.
- 4.12 The National Grid representative did recognise, however, that the industry would have concerns over any uncertainty regarding the timescales for implementation of Charging Methodology Amendment Proposals. She noted that CAP188 did not seek to make any changes to the CUSC with regard to the implementation of Charging Methodology Amendment Proposals, as National Grid considered that certainty could be provided through careful construction of implementation dates. For example, when considering an Amendment Proposal to the Charging Methodologies, the Working Group, National Grid and the Panel could continually review the timetable and implementation timescales, to provide certainty over the charging year (from 1st April in a given year to the following 31st March) in which a proposal would be able to be implemented.

- 4.13 Two Working Group members agreed that a window for raising Charging Methodology Amendment Proposals was unnecessary, but considered that the processes surrounding implementation of Charging Methodology Amendment Proposals should be clarified within the CUSC to provide certainty to the industry. One Working Group member noted that certainty is important as electricity generators and suppliers both have concerns over mid-year charging changes, due to operational concerns or contractual issues. The Working Group member suggested that to provide such certainty, a fixed cut-off date could be specified in the CUSC for Amendment Proposals which a party wishes to see implemented in the next charging year. In other words if the Charging Methodology Amendment Proposal had not reached a pre-designated stage in the CUSC change process by a pre-determined date each year then it would not be possible to implement that change for the next charging year starting on 1st April.
- 4.14 The Working Group discussed how a fixed cut-off date should be set. It was agreed that a standard implementation date of 1st April each year for charging changes would be preferable and that any cut-off date would need to work back from this date. The Working Group discussed the existing timescales for charging:
- The charging year runs from 1st April to 31st March each year;
 - Final Transmission Network Use of System (TNUoS) tariffs are published, by National Grid, at the end of January each year in order to give two months' notice to parties, as required under the CUSC, of the tariffs to apply from 1st April;
 - Final connection charges are provided, by National Grid, to Users at the end of January, in order to give the two months' notice to Users, as required by the CUSC, of the tariffs to apply from 1st April;
 - Both indicative TNUoS tariffs and connection charges are provided by National Grid earlier in the charging year (normally by the end of December).
- 4.15 The Working Group then considered the likely timescales surrounding an Authority decision, noting the Authority's current Licence requirement (see paragraph 7.1 below) to make Charging Methodology change decisions within 28 days of receipt of the documentation from National Grid. The Working Group noted that the Authority had indicated on numerous occasions that its Code Governance Review was designed to improve on the existing arrangements. Given this, the Working Group believed that as anything less than 28 days (for the Authority to opine on a Charging Methodology change) would not be an improvement on the situation today, that they could realistically include this as the benchmark in their consideration of the timescales. The Working Group also recognised the potential for the Authority to undertake a Regulatory Impact Assessment, which could delay the process by up to three months, thereby missing implementation of a proposal for the start of the next charging year.
- 4.16 Factoring in all the timescales above, the Working Group suggested that the cut-off date for a Charging Methodology Amendment Proposal to have progressed completely through the Amendments process would be the September Amendments Panel meeting for implementation the following 1st April at the earliest. In other words, the onus would be on the Proposer raising their Charging Methodology Amendment Proposal in sufficient time for it to have progressed (depending upon the complexity etc., of the change) through a Working Group, industry consultation etc., in accordance with the

change process set out in Section 8 of the CUSC, such that it was able to be presented, at the very latest, to the September Panel meeting for a recommendation vote. The Working Group noted that National Grid, as Code Administrator, could act as a 'critical friend' to the Proposer and advise on the potential timescales for taking their particular change through the CUSC change process, so that the Proposer could still meet the September Panel deadline. The timeline developed by the Working Group, including any assumptions, is described below:

- Last week in September: Panel recommendation vote at Panel meeting;
- First week in October: National Grid completes Amendment Report with Panel discussions / recommendation etc., and circulates to the Panel for comment;
- Second week in October: National Grid sends Amendment Report to Authority for decision;
- Second week in November: Authority decision due, in line with the 28 day current Licence requirement;
- NB. There is no industry control over when the Authority will make its decision; if the Authority chooses to undertake a RIA, this will add up to 3 months to the process;
- Mid-November onwards: National Grid calculates indicative TNUoS tariffs and connection charges based on the new methodology approved by the Authority, to be implemented from the following 1st April;
- Mid-December: National Grid publishes indicative connection charges;
- End January: National Grid publishes final TNUoS tariffs;
- End January: National Grid sends final connection charges to connectees.

4.17 The Working Group agreed that it should seek industry views on both (i) setting a charging window and (ii) setting a cut-off date for implementation of a Charging Methodology change from the following 1st April.

4.18 Subsequent to the Working Group meeting, the National Grid representative sought advice from National Grid's Transmission charging experts regarding the proposed timeline set out above. The charging experts noted that a cut-off date could provide additional certainty to the industry; however, in respect of the proposed timescales, they provided a number of caveats:

- Implementation timescales for a Charging Methodology proposal will vary depending on the complexity and significance of the change proposed. Some changes are relatively straight forward and therefore a September cut-off date may be earlier than necessary, whilst others would require a cut-off date earlier than September;
- A September cut-off date may leave insufficient time to implement a significant Use of System Charging Methodology change that required significant changes to National Grid's systems, such as the transport or tariff models;
- A September cut-off date may impact National Grid's ability to provide indicative TNUoS tariffs or connection charges¹ prior to publishing the actual charges. For example there may be insufficient time to collate data (e.g. precise maintenance data at every substation) and/or change

¹ National Grid is not obliged to provide indicative charges, but does so on a voluntary basis, where possible, by the end of December each year.

National Grid's calculation processes to accommodate proposed changes.

- 4.19 The Working Group agreed that it should consult the industry on charging windows and cut-off dates for implementation through a number of questions.

Review of Illustrative drafting

- 4.20 At the Working Group meeting on 21st August 2010, the Working Group reviewed the illustrative legal text of Sections 8 and 11 of the CUSC provided by National Grid (please see separate volume 2 which includes the illustrative text). With regard to Section 8, questions were raised over references in paragraph 1.26.4 to the role of the Charging Methodology Forum in discussing and developing Amendment Proposals; the requirement to notify each Materially Affected Party in paragraph 1.28.2 and a reference to a notification requirement in paragraph 1.28.3. National Grid agreed that the text in these paragraphs should be reviewed. A number of minor typographical comments were made regarding Section 11 of the CUSC, which National Grid noted. In addition, as noted in paragraph 3.1 above, National Grid provided an illustrative version of the two methodologies as they might appear within the CUSC just prior to the second Working Group meeting on 21st July 2010 and there was not enough time to review them in detail at the meeting. Some of the definitions in Section 11 related to the illustrative version of the two methodologies.

Post Working Group Consultation discussions

- 4.21 The Working Group held a third meeting on 27th August 2010 to discuss responses to the Working Group Consultations, finalise the original CAP188 Amendment Proposal solution and agree any Working Group Alternative Amendments. The National Grid representative summarised the seven responses received to the Working Group Consultation (see section 12 of this report for full summary). Six of the seven respondents stated they supported CAP188; one respondent was silent.

Approach to Charging Methodology Amendment Proposals

- 4.22 In response to the first question, "Which approach to the Charging Methodology proposals do you prefer?" (paras 4.5 to 4.10 refer), four respondents preferred the second approach of raising separate Amendment Proposals to each of the Charging Methodologies and the rest of the CUSC, whereas two respondents preferred the first approach of raising one single proposal to change all elements of the CUSC. One respondent suggested that any approach adopted should be sufficiently flexible to make smaller changes closer to the charging change date.
- 4.23 National Grid noted that the Working Group had requested that it seek legal advice on this issue. The National Grid representative summarised the legal advice it had received, contained within Annex 5 of this report, which considers that a holistic approach (the 'first approach' – see paragraph 4.6) to raising one Amendment Proposal which covered both the CUSC and the Charging Methodologies was not prevented by the licence modifications and may make the process easier. However, the advice noted that:

"It does not seem possible at this stage to decide generally whether it is better to pursue the holistic Amendment Proposal approach or the separate

Amendment Proposal approach. This should therefore be reviewed when and if it becomes an issue."

The Working Group considered that the advice was not conclusive on the issue. After further discussion, the Working Group concluded that a separate Amendment Proposals approach (the 'second approach' – see paragraphs 4.7 – 4.9) was the most appropriate, for a number of reasons. Firstly, such an approach addresses the issue that "Materially Affected Parties" are only allowed to raise Amendment Proposals to the Charging Methodologies and not to the rest of the CUSC. Secondly, this approach would not prevent multiple proposals from being flagged as "linked" by the Proposer(s); this could also be highlighted by the Code Administrator in the Initial Written Assessment for such Amendment Proposals; in addition, the Panel has the ability, as set out in paragraph 8.16.5(a) of the CUSC, to amalgamate such Amendment Proposals. Thirdly, the separate approach was more widely supported by Working Group Consultation respondents. The Ofgem representative expressed a concern that drafting the CUSC legal text such that single, holistic, Amendment Proposals were not able to be raised could result in an overly prescriptive approach.

Charging Windows

- 4.24 All seven respondents agreed with the Working Group that a window for raising Charging Methodology modification proposals is unnecessary and that there should be no restrictions in this area. The Working Group agreed that charging windows should not form part of the CAP188 proposal and that no alternatives should be raised in this area.

Fixed cut-off dates for implementation in following Charging Year

- 4.25 Five out of seven respondents agreed with the Working Group that a fixed cut-off date for an Amendment Proposal to reach the Panel Recommendation stage in order to achieve implementation by the start of the following Charging Year (1st April) would be a good idea. One further respondent supported an indicative timescale being included within the CUSC, but was concerned that a firm cut-off date may restrict Ofgem's decision making process. The final respondent did not support a fixed approach as it wanted the ability for smaller changes to be made closer to the date of charging changes, which could be prevented by a fixed cut-off approach. However, a Working Group member noted that there must, at some point, be a cut-off date, even if that was 31st March each year. Those respondents who supported a fixed cut-off date considered that such an approach would help provide clarity and predictability of future costs to the industry. One respondent suggested that, without an implementation cut-off date, parties would need to put a "risk factor" amount into their tariffs to take account of potential changes to charges at a later date, which would lead to higher prices for consumers.

Timing of a fixed cut-off date

- 4.26 The five respondents who supported a fixed cut-off date all agreed with the Working Group's proposed timescale of that date being six months prior to 1st April (based on the timeline set out in paragraph 4.16 above) which means reaching the September Panel meeting for the Panel Recommendation Vote on the Amendment Proposal. The Working Group recognised that any fixed cut-off date would need to be reviewed after implementation to ensure it was

fit for purpose, as the new charging governance regime is a significant change from the existing arrangements.

- 4.27 The National Grid Representative expressed a concern that the fixed cut-off date, if prescribed within the CUSC, would prevent minor changes being made closer to the following Charging Year. Her concerns arose following confirmation from the Working Group that the CUSC should make it clear that any Charging Methodology Amendment Proposal which did not reach the Panel Recommendation Vote stage at the September Panel meeting would require an Implementation Date to be recommended of the subsequent Charging Year, i.e. if the Proposer missed the September deadline, he would have to wait up to 18 months for the Amendment Proposal to be implemented, even if it later transpired that it would be possible for the change to be made sooner.
- 4.28 Having raised those concerns, the National Grid representative sought to raise a Working Group Alternative Amendment which removed the fixed cut-off date. She noted that National Grid would provide advice to the industry, any Working Group and the Amendments Panel when they discussed an appropriate Implementation timetable for any Charging Methodology Amendment Proposal. Such advice would include any restrictions in terms of likely systems changes that would impact on the implementation timescales. In discussing the detail of such a WGAA, the Working Group suggested that if there is no certainty of a cut-off date to the industry for achieving implementation of an Amendment Proposal (which related to charging) in the following Charging Year, the industry may seek to try and pressurise the Panel to progress Amendment Proposals in shorter timescales. The National Grid representative recognised the importance of providing clarity of future charges to the industry and therefore agreed that Charging Methodology changes should only be recommended for implementation from 1st April each year.
- 4.29 The Ofgem representative expressed a concern over making the CUSC overly prescriptive in this area. The Working Group discussed that the existing CUSC provisions which enable the Authority to set Implementation Dates in its Direction to the Company to implement an Amendment Proposal, taking into account the Panel's proposed Implementation Date. The Panel could provide reasons within its final report as to why the Authority should direct a mid-year Implementation Date, if one were required to take account of exceptional circumstances. The Report would also reflect wider industry views and consultation responses on such exceptional circumstances. The full detail of the WGAA is contained within Annex 6 of this report.

Summary of "original" CAP188 solution

- 4.30 In summarising the Working Group's discussions of the Working Group Consultation responses, the Working Group chairman clarified the "original" CAP188 solution, as supported by the majority of Working Group members, as follows:
- Amendment Proposals to the CUSC and to the Charging Methodologies will be required to be raised as separate Amendment Proposals, although they can be flagged as "linked" by the Proposer(s);
 - There will be no concept of a "charging window" in which to raise a Charging Methodology Amendment Proposal;

- The CUSC should prescribe a fixed cut-off date for a Charging Methodology Amendment Proposal to complete the Amendments process in order for its proposed implementation at the beginning of the following Charging Year at the earliest.
- The requirement will be for the Panel to have made its Recommendation Vote on the Amendment Proposal by the last business day in September each year, at the latest, in order for that Amendment Proposal to be able to be proposed, by the Panel, for implementation from the following 1st April (at the earliest);
- Implementation Dates for Charging Methodology Amendment Proposals should always be at the start of the charging year, namely 1st April each year.

Review of revised Illustrative drafting

- 4.31 Following the Working Group meeting on 27th August to finalise the solutions for CAP188, National Grid revised the illustrative legal drafting and provided an updated version to Working Group members on 8th September 2010. The Working Group reconvened by teleconference on 15th September to review the updated drafting. At that meeting, National Grid noted that it had not provided drafting for the Working Group Alternative Amendment as the baseline was yet to be finalised, but that the WGAA text would be provided with the final Working Group report and would be available to Working Group members for comment. The text is available in Annex 1 of this report.
- 4.32 Working Group members commented on the revised illustrative legal text (dated 8th September) as follows:
- Paragraph 8.16.1 should be reordered to make it clearer that a "Materially Affected Party" may only raise an Amendment Proposal to the charging Methodologies and not to the rest of the CUSC;
 - National Grid noted that it would propose some additional wording in paragraph 8.16.3 to reflect that individual Amendment Proposals could be flagged as being linked, by adding in the text: "When making a **CUSC Modification Proposal** in respect of the **Charging Methodologies**, the **Proposer** may make specific reference to any link with another **CUSC Modification Proposal**." No comments were made on the proposed addition;
 - National Grid highlighted that additional text would be required in paragraph 8.22.4 (b) to reflect the new provisions relating to the cut-off date for implementation of charging methodology proposals. National Grid noted that the new text had been drafted but an error had been spotted in the specification of the cut-off date, so it would be rectified then circulated with the final draft text;
 - One Working Group member asked that references to the "Charging Methodology Forum" be amended to the "Transmission Charging Methodology Forum" to reflect the continuation of the existing group. National Grid responded that the draft text reflected the licence wording, but accepted that this could cause confusion among the industry as to whether it referred to a new forum and agreed to review it with the legal team;

- In line with an earlier Working Group request paragraph 8.26.4, which described the different forums a proposal to change the Charging Methodologies could be referred to, was deleted as it was considered to be slightly confusing;
- National Grid highlighted that paragraph 8.28.3 also needs to be updated to reflect the proposed 1st April standard implementation date for proposals to change the Charging Methodologies.

5.0 WORKING GROUP ALTERNATIVE AMENDMENT

5.1 At the meeting on 27th August 2010, National Grid Electricity Transmission plc raised a Working Group Alternative Amendment, following finalisation of the original CAP188 solution by the Working Group. National Grid raised the WGAA as it did not agree with the majority of the Working Group that a cut-off date for implementation of an Amendment Proposal to the charging methodologies for the following charging year (from next 1st April) should be as restrictive. In every other respect the WGAA is identical to the original CAP188 Amendment Proposal. National Grid did agree, however, that to provide certainty to the industry, an implementation date of 1st April should always be recommended for an Amendment Proposal to the charging methodologies. Full details of the WGAA are contained within Annex 6 to this report.

6.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

6.1 At the Working Group meeting on 27th August 2010, the Working Group chairman undertook the Working Group vote on an assessment of the original CAP188 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 under the Act and by this 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.

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 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. There were a maximum of six Working Group votes available at the meeting, with 5 voting Working Group members present and one Working Group member having been appointed as an alternate to an absent Working Group member. During the meeting, one voting Working Group member who was attending via teleconference suffered a telephone failure and therefore submitted her vote in writing by email to all Working Group members after the meeting. For clarity, the Working Group chairman and the Authority representative do not have a vote.
- 6.5 Summary table of the Working Group's votes.

View against Applicable CUSC Objectives	Better than baseline	Not Better than baseline	Better than original	Better than WGAA	Best
Original	6	0	-	5	5
WGAA	6	0	1	-	1
Baseline	-	-	0	0	0

- 6.6 **Vote 1(a): Does CAP188 original Amendment Proposal better facilitate the Applicable CUSC Objectives than the CUSC baseline?**

Objective	(a)	(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 CAP188 proposal form	No comment
Stuart Cotten	Yes, agree with justification as set out in CAP188 proposal form	No comment
Alex Thomason (National Grid)	Yes, CAP188 seeks to implement our new licence obligations.	No comment
Esther Sutton	Yes, it demonstrably meets the licence requirements.	Neutral.

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

Objective	(a)	(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 CAP188 proposal form	No comment
Stuart Cotten	Yes, agree with justification as set out in CAP188 proposal form	No comment
Alex Thomason (National Grid)	Yes, CAP188 seeks to implement our new licence	No comment

Objective	(a)	(b)
	obligations.	
Esther Sutton	Yes, it demonstrably meets the licence requirements.	Neutral.

6.7 **Vote 2: Does the WGAA better facilitate Applicable CUSC Objectives than CAP188 original?**

Objective	(a)	(b)
Garth Graham	Neutral	No. Generators and suppliers need certainty of charges. Lack of certainty does not facilitate competition.
Garth Graham on behalf of Fiona Navesey	Neutral	No. Generators and suppliers need certainty of charges. Lack of certainty does not facilitate competition.
Steven Eyre	Neutral	No. Generators and suppliers need certainty of charges. Lack of certainty does not facilitate competition.
Stuart Cotten	Neutral	No. Generators and suppliers need certainty of charges. Lack of certainty does not facilitate competition.
Alex Thomason (National Grid)	Yes. WGAA provides certainty of 1 st April date, but leaves flexibility to allow the Panel to set appropriate dates on a case by case basis.	Neutral
Esther Sutton	Neutral	No. If proposed changes are relatively minor it may seem overly restrictive to stipulate that a proposal not reaching the Sept Panel, in theory that could be recommended in Oct and approved in Nov and in indicative charges in Dec could not be implemented until April of y+2. Greater flexibility in suggesting modifications is generally desirable; but not at the expense of certainty. While implementation may remain on the 01/04 and provision of Final TNUoS tariffs at the end of Jan be unaffected, the WGAA will increase uncertainty with potentially negative impact on competition if Parties find themselves faced with multiple scenarios of indicative charges in Dec.

In light of the Working Group minority support for the WGAA Proposal, the Working Group chairman used his powers under the CUSC to progress the WGAA, on the grounds that in his opinion it better facilitates the Applicable CUSC Objectives than the CUSC baseline and due to concerns over the potentially arbitrary cut-off date set out in the CAP188 "original", such that it could be considered by the Amendments Panel.

6.8 Vote 3: Which option BEST facilitates achievement of the Applicable CUSC Objectives? (CAP188 original, WGAA or CUSC baseline)

WG Member	Best
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	Original, for the reasons set out above against applicable objective (a)
Stuart Cotten	Original, for the reasons set out above against applicable objective (a)
Alex Thomason (National Grid)	WGAA, against applicable objective (a)
Esther Sutton	There is some merit in giving parties more freedom around raising proposals bearing in mind the likely timescales required for the change in question hence I am not unhappy that the WGAA goes forward to the Panel at the behest of the Chair. However overall I think the Original best facilitates the CUSC Objectives: while both facilitate (a) the Original giving greater certainty seems preferable under (b), as set out above.

The Working Group voted, by majority, that the original CAP188 Amendment Proposal was BEST.

7.0 PROPOSED IMPLEMENTATION

7.1 The proposed implementation approach for CAP188 and the Working Group Alternative Amendment is set out below. In terms of the textual changes to the CUSC, the Working Group and National Grid propose that they should be implemented ten (10) Business Days after an Authority decision. Those Working Group Consultation respondents which commented on the proposed Implementation Date agreed that it seemed reasonable.

7.2 In addition to the textual changes, National Grid proposes three areas of transitional implementation which are set out in detail below and can be summarised as follows:

- Authority approval mechanisms for Charging Methodology changes pre and post 31st December 2010;
- Applicability of CAP188 to existing Amendment Proposals;
- Implementation of existing Charging Methodologies as part of CAP188.

Authority approval mechanisms for Charging Methodology changes

- 7.3 The first element of transition reflects the modifications made to National Grid's Transmission Licence in July 2010. The transitional arrangements facilitate the change from the Authority's existing right of veto for Charging Methodology change proposals to a decision mechanism. Under the existing Licence arrangements, the Authority has 28 calendar days in which to veto a change proposed by National Grid Electricity Transmission plc in respect of the Charging Methodologies. Should the Authority not veto the change within this timeframe, it will be implemented. The new arrangements (brought about by the CAP188 Amendment Proposal) will be the existing process for Authority decisions on CUSC Amendment Proposals, whereby the Authority must provide a decision to implement or reject an Amendment Proposal, but is not limited in the time it has to make its decision. It should be noted, however, that the Authority aims to make 70% of decisions across all code modification proposals within 25 working days.
- 7.4 The transitional implementation arrangements proposed for CAP188 are that any change proposal which is sent to the Authority before 30th December 2010 will follow the existing "non-veto" decision making process. Any Amendment Proposal for the charging methodologies made on or after 31st December 2010 will follow the CUSC Amendment Proposal decision making process and will require an Authority decision. The Working Group did not suggest any alternative transitional arrangements for implementing CAP188 and no alternatives were suggested by respondents to the Working Group Consultation.

Applicability of CAP188

- 7.5 In addition to the licence related transitional arrangements described above, National Grid proposes that a further transitional arrangement should apply, as discussed at the Working Group meeting on 15th September 2010. 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.
- 7.6 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.
- 7.7 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).

Implementation of existing Charging Methodologies within the CUSC

- 7.8 As noted above, it is proposed that the textual changes to the CUSC are implemented 10 Business Days after an Authority Decision. The textual changes are set out in Volume 2 of this Consultation document and include revisions to Sections 8 and 11, in addition to a new Section 14 of the CUSC which will house the Charging Methodologies. In order to take account of any changes to the Charging Methodologies which may be approved between 27th September 2010 (date of publication of this consultation document) and the end of December 2010 (31st December 2010 is the latest implementation date to meet the licence obligation), National Grid proposes that the prevailing Charging Methodologies in force on the date and time of the Authority's approval would be implemented in the CUSC.

Industry responses to Proposed Implementation approach

- 7.9 As part of the Company Consultation, views were invited on the implementation approach set out above, both in terms of implementation of the textual changes and the proposed transitional arrangements. Three of the four industry responses stated that they supported the proposed approach of implementing the textual changes 10 business days after an Authority decision; one respondent was silent. With regard to the wider transitional arrangements, two respondents explicitly supported the proposed arrangements; the other two responses were silent.
- 7.10 As set out in paragraph 10.4 below, National Grid also received comments from Ofgem, in which they set out concerns that the legal text which sought to implement the transitional arrangements for Charging Methodologies within the CUSC was flawed. Ofgem's comments are included in Volume 2 of this Amendment Report. Ofgem suggested some revised legal text which it considered would address its concerns. National Grid acknowledged Ofgem's concerns and proposed revisions and will review it as part of the post-implementation review, as set out in paragraph 10.4 below.

8.0 IMPACT ON THE CUSC

- 8.1 CAP188 requires amendments to Section 8 of the CUSC to introduce the concept of a "Materially Affected Party" and the "Charging Methodologies Forum", as required by the Transmission Licence modifications. It also requires amendments to Section 11 of the CUSC to introduce the terms defined in the Charging Methodologies glossaries into the CUSC. Finally, a new Section 14 of the CUSC will be created to house the two existing Charging Methodologies.
- 8.2 National Grid provided illustrative consolidated legal text to the Working Group for its review, including a change marked version of CUSC Sections 8 and 11 and an illustrative draft of the new Section 14, change marked to show amendments to the existing Statements of the Use of System and Connection Charging Methodologies. During the course of the Working Group, National Grid updated the illustrative text to take account of comments from Working Group members and the Working Group reviewed a further draft of the text at its meeting on 15th September 2010. Comments provided by the Working Group were addressed by National Grid and the final legal text was provided in Volume 2 of the Consultation document, published on 27th September 2010.

9.0 IMPACT ON INDUSTRY DOCUMENTS

Impact on Core Industry Documents

- 9.1 Neither the Proposer, 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, 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 Uniform Network Code in due course to meet the new requirements under the modified Transmission Licences.

10.0 INDUSTRY VIEWS AND REPRESENTATIONS

Responses to the Working Group Consultation

- 10.1 The following table provides an overview of the representations received. Copies of the representations are contained in Volume 2 of this Working Group report.

Reference	Company	Supportive	Comments
CAP188-WGC-01	Centrica	N/A	<ul style="list-style-type: none"> • Supports single proposal approach, but notes risk of package of proposals being rejected due to one element; • Agrees that charging windows are unnecessary; • Supports fixed cut-off date for implementation; • Agrees that cut-off date 6 months prior to 1st April is appropriate; • Depending on number of charging methodology change proposals raised at implementation of CAP188, a transitional period with an interim process may be required to manage the volume of change proposals; • Supports the overall minimal approach of bringing the CUSC in line with the new licence obligations; • Would welcome clarity from Ofgem as to the criteria it intends to use when designating a party as "materially affected"; • If TCMF is used as CUSC workgroup, it will be important to ensure same checks and balances are implemented in respect of TCMF members as of workgroup members; • Notes that having a firm cut-off date for implementation would appear to help National Grid in providing indicative TNUoS tariffs;

Reference	Company	Supportive	Comments
CAP188-WGC-02	Drax Power Ltd	Yes	<ul style="list-style-type: none"> • Supports multiple proposal approach, this would help avoid confusion over which set of applicable objectives apply; • Agrees that charging windows are unnecessary; • Supports fixed cut-off date for implementation; • Agrees that cut-off date 6 months prior to 1st April is appropriate; • Parties should be made aware that meeting the six month cut-off date does not guarantee implementation in the following charging year; • Drax is generally comfortable with National Grid's approach to implementing the new licence obligations; • Agrees that CAP188 better facilitates Applicable CUSC Objective (a); • Supports proposed implementation approach;
CAP188-WGC-03	EDF Energy	Yes	<ul style="list-style-type: none"> • Supports improved approach to charging methodologies governance; • Supports multiple proposal approach, although notes that it would be less transparent; • Where two modifications are required, it is important that these are considered and assessed in a holistic manner; • Agrees that charging windows are unnecessary; • Supports cut-off date for implementation, but suggested this should be indicative rather than fixed to avoid unduly restricting Ofgem's regulatory decision making process; • Agrees that cut-off date 6 months prior to 1st April is appropriate; • Supports Amendments Panel taking ownership of the TCMF terms of reference;
CAP188-WGC-04	E.ON UK	Yes	<ul style="list-style-type: none"> • Agrees that CAP188 facilitates Applicable CUSC Objective (a); • Supports proposed implementation approach; • Dependent on legal advice, E.ON supports multiple proposal approach, noting that this would not preclude separate amendments being raised; • Agrees that charging windows are unnecessary as they could result in bottlenecks; • Supports fixed cut-off date for implementation as it would give industry certainty; • Agrees that cut-off date 6 months prior to 1st April is appropriate, does not consider it should have a negative impact on National Grid's ability to provide indicative charges.
CAP188-WGC-05	SSE	Yes	<ul style="list-style-type: none"> • SSE welcomes the inclusion of the charging methodologies within the CUSC

Reference	Company	Supportive	Comments
			<p>as a major improvement;</p> <ul style="list-style-type: none"> Notes "minimum" approach and suggests consideration may need to be given to additional governance changes over the longer term; Supports "adoption" of TCMF terms of reference by the Amendments Panel; SSE believes CAP188 original better achieves Applicable CUSC Objective (a) than the CUSC baseline; Supports proposed implementation approach; Supports multiple proposal approach due to concerns that the single proposal approach is not legally robust; Agrees that charging windows are unnecessary; Supports fixed cut-off date for implementation to give parties certainty and avoid parties putting a "risk factor" amount into their tariffs or contracts; Agrees that cut-off date 6 months prior to 1st April is appropriate, noting that parties seeking to raise a change have a responsibility of doing so with sufficient time for that change to be practically implemented;
CAP188-WGC-06	Wyre Power	Yes	<ul style="list-style-type: none"> Believes that CAP188 better facilitates objective (a); Preference for related CUSC and charging proposals to be considered in a coordinated manner in minimum number of meetings possible; Notes that TAR process, with many meetings, made it hard for small participants to get involved; Agrees that charging windows are unnecessary and could deter those who are not clear on the window timings; Does not support fixed cut-off date for implementation, preferring a more flexible approach that could be adapted to support a later decision date.
CAP188-WGC-07	ScottishPower	Yes	<ul style="list-style-type: none"> ScottishPower supports CAP188; Supports multiple proposal approach as it gives more flexibility; Agrees that charging windows are unnecessary and notes that Panel is able to prioritise and manage change; Supports fixed cut-off date for implementation as giving more certainty to the industry; Agrees that cut-off date 6 months prior to 1st April was a good starting point for the majority of changes; Agrees that the proposed implementation timescales are suitable.

10.2 No WG Consultation Alternative Requests were received.

Views of Panel Members

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

Views of Core Industry Document Owners

10.4 No responses were received from Core Industry Document Owners.

Responses to Company Consultation

10.5 The following table provides an overview of the representations received. Copies of the representations are contained in Volume 2 of this Amendment Report.

Reference	Company	Supportive	Comments
CAP188-CR-01	SSE	Yes: prefer CAP188 original	<ul style="list-style-type: none"> • Believes CAP188 better facilitates applicable CUSC objective (a) when compared with the baseline. • Do not believe WGAA better achieves the Applicable Objective when compared with the original but do believe it is better than the baseline. Therefore the original is best. • Mindful that parties require certainty that from a known date, the charges for the forthcoming year will be set. • Supports proposed implementation approach
CAP188-CR-02	EDF	Yes: prefer CAP188 original	<ul style="list-style-type: none"> • Agree CAP188 better facilitates applicable CUSC objective (a) • Do not believe WGAA better facilitates the Applicable Objectives as compared to the baseline • Agree with proposed transitional implementation arrangements.
CAP188-CR-03	EON	Yes: prefer CAP188 original	<ul style="list-style-type: none"> • Support implementation of the proposal. • Would have preferred the single proposal approach but note that the legal advice on the viability of this approach was not conclusive. • Agree that the WGAA is better than the baseline. Against the proposed, generators and suppliers need certainty of forthcoming charges by a known date each year.
CAP188-CR-04	Scottish Power	Yes	<ul style="list-style-type: none"> • Agree that the proposed amendment better facilitates Applicable Objective (a). • Neutral on Applicable Objective (b) • Supports multiple proposal approach as it gives more flexibility; • Agrees that charging windows are unnecessary and notes that Panel is able to prioritise and manage change; • Supports fixed cut-off date for implementation as giving more certainty to the industry;

			<ul style="list-style-type: none"> • Agrees that cut-off date 6 months prior to 1st April was a good starting point for the majority of changes; • Agree that CAP188 should be implemented 10 Business Days after an Authority decision.
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10.6 The response received from ScottishPower was sent using the Working Group Consultation response proforma, which contained responses to the Working Group Consultation questions. However, for the purpose of the Company Consultation, the views of ScottishPower have been captured above in relation to their views on whether they support CAP188 and the proposed implementation timescales.

10.7 On 11th October 2010, Ofgem contacted National Grid to highlight its concerns with the final legal text for CAPs 183, 184, 185 and 188, published in Volume 2 of the Company Consultation documents on 27th September 2010. Ofgem subsequently sent National Grid detailed comments, referencing the paragraphs which it believes require amending. Ofgem's comments can be found in Volume 2 of this Amendment Report. As Code Administrator, National Grid responded that the CUSC does not explicitly allow for the legal text to be amended once the Company Consultation has been published and that the established practice and precedent over many years has been not to accept changes from CUSC Parties to the legal text at the Company Consultation phase and therefore the legal text is fixed from that point onwards.

10.8 Discussions between Ofgem and National Grid, as Code Administrator, identified those elements of the text which were of significant concern to Ofgem. National Grid acknowledges Ofgem's comments, particularly those identified as significant concerns, and has undertaken to review all of the legal text as part of a Code Governance Review post-implementation review, which will be led for the CUSC by the Governance Standing Group.

11.0 COMMENTS ON THE DRAFT AMENDMENT REPORT

11.1 In the first draft Amendment Report which was published for industry comment on 14th October 2010, one minor comment was received from Scottish and Southern Energy who provided clarification on the established precedent to the amendments process. This comment has been incorporated into paragraph 10.7.

12.0 WORKING GROUP RECOMMENDATION

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

View against Applicable CUSC Objectives	Better than baseline	Not Better than baseline	Better than original	Better than WGAA	Best
Original	6	0	-	5	5
WGAA	6	0	1	-	1

Baseline	-	-	0	0	0
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- 12.2 The Working Group therefore recommended, by majority, that CAP188 original Amendment Proposal better facilitates the Applicable CUSC Objectives than the CUSC baseline or the WGAA and should be implemented.
- 12.3 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 CAP188 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 and he raised a concern over the potential arbitrary nature of the cut-off date proposed for the "original" CAP188 solution².

13.0 AMENDMENTS PANEL RECOMMENDATION

- 13.1 At the meeting of the Amendments Panel on 29th October 2010, the Panel Members voted on the original CAP188 Amendment Proposal and the WGAA. Two Panel Members were absent from the meeting and had assigned their votes to an alternate Panel Member; one further Panel Member was not present at the meeting and had not assigned his vote. This meant that a maximum of eight votes were able to be cast at the meeting.
- 13.2 The Panel voted unanimously that CAP188 original Amendment Proposal better facilitates both Applicable CUSC Objectives (a) and (b). The Panel voted unanimously that the WGAA better facilitates Applicable CUSC Objective (a) and by majority that it better facilitates Applicable CUSC Objective (b). The Panel voted by a majority of 7 votes to 1 that the **original** Amendment Proposal best facilitates the Applicable CUSC Objectives overall.
- 13.3 The tables below show a breakdown of Panel Members' votes for the original Amendment Proposal and the WGAA against the Applicable CUSC Objectives and the rationale for such voting. For ease of reference the Objectives are as follows:

(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this 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.

² "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".

Panel Recommendation Vote for CAP188 original

Panel Member	Better facilitates Applicable Objective (a)?	Better facilitates Applicable Objective (b)?
Paul Mott	Yes. The fixed cut-off date is not perfect as not all Amendment Proposals are as complex as each other, however, it is preferable to no cut-off date as it manages expectations and provides good discipline to the Panel. CAP188 represents a more efficient process than currently exists as it allows other parties to raise charging methodology changes.	Yes, the original represents a minor improvement under (b).
Bob Brown	Yes, CAP188 delivers National Grid's licence obligation. It also provides a more efficient process for charging methodology changes. The original proposal provides certainty to the market on the charge setting process. However, you should not restrict options too far; particularly with smaller parties in mind.	Yes, a more efficient process is better for competition.
Fiona Navesey	Yes, CAP188 original is more transparent and improves accessibility against the CUSC baseline and should make TOs more accountable. There is also the potential for introducing more innovative charging methodology changes from third parties. CAP188 would also allow charging impacts to be considered alongside associated CUSC Amendment Proposals. Preference for the original as it provides certainty, noting that the recent mid-year tariff change was extremely difficult for the industry.	Yes, CAP188 will improve transparency and accessibility and therefore could potentially improve competition.
Fiona Navesey (on behalf of Paul Jones)	Yes, CAP188 original is more transparent and improves accessibility against the CUSC baseline and should make TOs more accountable. There is also the potential for introducing more innovative charging methodology changes from third parties. CAP188 would also allow charging impacts to be considered alongside associated CUSC Amendment Proposals. Preference for the original as it provides certainty, noting that the recent mid-year tariff change was extremely difficult for the industry.	Yes, CAP188 will improve transparency and accessibility and therefore could potentially improve competition.
Garth Graham	Yes. Noted that the Company Consultation respondents were unanimous in supporting the fixed cut-off date. Raised a concern over the EDF response which opined that the Panel could be pressurised by Proposers to shorten timescales. Noted that there is no "opening" of the window and that a party could raise a charging modification proposal at any time; there is just a "guillotine" at the end of the modification process.	Yes, CAP188 will improve transparency and accessibility and therefore could potentially improve competition.
David Smith	Yes, CAP188 provides clarity to the industry	Yes. CAP188 offers

Panel Member	Better facilitates Applicable Objective (a)?	Better facilitates Applicable Objective (b)?
	<p>on the process for raising changes to the charging methodologies.</p> <p>It also facilitates non-discrimination by allowing materially affected parties to raise changes to the charging methodologies.</p> <p>Raised a concern over fixed cut-off date – it may mislead the industry into thinking that meeting that date could guarantee implementation for the following 1st April.</p> <p>Noted that the Panel can still push back on third parties trying to pressurise it for shorter lead times.</p>	<p>transparency and accessibility to the industry, particularly to smaller parties, to bring forward their change proposals.</p>
Barbara Vest	<p>Yes, as it is a good idea for third parties to be able to raise change. CAP188 original is preferable as there is a need to manage uncertainty, for example to the industry in contracting rounds.</p>	<p>Yes, CAP188 will improve transparency and accessibility and therefore could potentially improve competition.</p>
Barbara Vest (on behalf of Simon Lord)	<p>Yes, as it is a good idea for third parties to be able to raise change. CAP188 original is preferable as there is a need to manage uncertainty, for example to the industry in contracting rounds.</p>	<p>Yes, CAP188 will improve transparency and accessibility and therefore could potentially improve competition.</p>

Panel Recommendation Vote for CAP188 WGAA

Panel Member	Better facilitates Applicable Objective (a)	Better facilitates Applicable Objective (b)
Paul Mott	<p>Yes. The fixed cut-off date is not perfect as not all Amendment Proposals are as complex as each other, however, it is preferable to no cut-off date as it manages expectations and provides good discipline to the Panel.</p> <p>CAP188 represents a more efficient process than currently exists as it allows other parties to raise charging methodology changes.</p>	<p>Yes, the original represents a minor improvement under (b).</p>
Bob Brown	<p>Yes, CAP188 delivers National Grid's licence obligation. It also provides a more efficient process for charging methodology changes.</p> <p>There should be a need for parties to demonstrate to the Panel why they could not have raised their change proposal earlier in the process.</p>	<p>Yes, a more efficient process is better for competition.</p>
Fiona Navesey	<p>Yes, CAP188 is more transparent and improves accessibility against the CUSC baseline and should make TOs more accountable. There is also the potential for introducing more innovative charging methodology changes from third parties. CAP188 would also allow charging impacts to be considered</p>	<p>Yes, CAP188 will improve transparency and accessibility and therefore could potentially improve competition.</p>

Panel Member	Better facilitates Applicable Objective (a)	Better facilitates Applicable Objective (b)
	<p>alongside associated CUSC Amendment Proposals. Preference for the original over the WGAA as it provides greater certainty, noting that the recent mid-year tariff change was extremely difficult for the industry.</p>	
<p>Fiona Navesey (on behalf of Paul Jones)</p>	<p>Yes, CAP188 is more transparent and improves accessibility against the CUSC baseline and should make TOs more accountable. There is also the potential for introducing more innovative charging methodology changes from third parties. CAP188 would also allow charging impacts to be considered alongside associated CUSC Amendment Proposals. Preference for the original over the WGAA as it provides greater certainty, noting that the recent mid-year tariff change was extremely difficult for the industry.</p>	<p>Yes, CAP188 will improve transparency and accessibility and therefore could potentially improve competition.</p>
<p>Garth Graham</p>	<p>Yes, the WGAA better facilitates objective (a), but is not better overall. If the WGAA were implemented charges would go up as generators would have to factor in a risk premium against varying charges.</p>	<p>Neutral.</p>
<p>David Smith</p>	<p>Yes, CAP188 provides clarity to the industry on the process for raising changes to the charging methodologies. It also facilitates non-discrimination by allowing materially affected parties to raise changes to the charging methodologies. Preference for the WGAA due to concerns over a fixed cut-off date and potential to mislead the industry into thinking that meeting that date could guarantee implementation for the following 1st April. Noted that the Panel can still push back on third parties trying to pressurise it for shorter lead times.</p>	<p>Yes. CAP188 offers transparency and accessibility to the industry, particularly to smaller parties, to bring forward their change proposals.</p>
<p>Barbara Vest</p>	<p>Yes as it is a good idea for third parties to be able to raise change. Preference for original as set out above.</p>	<p>Yes, CAP188 will improve transparency and accessibility and therefore could potentially improve competition.</p>
<p>Barbara Vest (on behalf of Simon Lord)</p>	<p>Yes as it is a good idea for third parties to be able to raise change. Preference for original as set out above.</p>	<p>Yes, CAP188 will improve transparency and accessibility and therefore could potentially improve competition.</p>

Panel preference for which proposal BEST facilitates the Applicable CUSC Objectives

Panel Member	BEST
Paul Mott	Original
Bob Brown	Original
Fiona Navesey	Original
Fiona Navesey (on behalf of Paul Jones)	Original
Garth Graham	Original
David Smith	WGAA
Barbara Vest	Original
Barbara Vest (on behalf of Simon Lord)	Original

- 13.4 One Panel Member changed his overall preference from the WGAA to the original, after having listened to the rationale provided by the other Panel Members.

14.0 NATIONAL GRID RECOMMENDATION

- 14.1 National Grid, as Proposer of CAP188, supports its implementation on the grounds that it better facilitates Applicable CUSC Objective (a), the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence. CAP188 achieves this by implementing the licence modifications relating to the governance of charging methodologies, made in July 2010, within the CUSC. Furthermore, CAP188 offers a more efficient CUSC modification process in placing the charging methodologies within the CUSC by providing clarity to the industry on how, and by whom, the charging methodologies may be changed and ensuring retention of an accessible forum to discuss transmission charging issues. Implementation of CAP188 also allows for efficient discharge of obligations regarding non-discrimination by ensuring that any non-code party who can provide evidence that it is materially affected by the charging methodologies is able to propose a change to the charging methodologies in the same way as CUSC Parties.
- 14.2 With regard to Applicable CUSC Objective (b), National Grid believes that CAP188 potentially better facilitates competition between parties by allowing CUSC Parties who pay transmission charges the opportunity to propose (and justify) a change to the underlying methodologies.
- 14.3 National Grid has also raised the Working Group Alternative Amendment to CAP188 for the reasons set out in paragraphs 4, 5 and 6 above. National Grid considers that the CAP188 WGAA better facilitates Applicable CUSC Objective (a) than the "original" CAP188 solution as the WGAA achieves implementation of the licence modifications, but ensures a more flexible approach to implementing changes to the Charging Methodologies, while retaining a level of clarity of charging for the industry.
- 14.3 **National Grid's overall recommendation is that the CAP188 WGAA be implemented for the reasons set out above.**

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 this Amendment Report which contains the final draft of the illustrative legal text for Sections 8 and 11 of the CUSC, a new contents page for the CUSC and a new section 14 to include the Charging Methodologies. Volume 2 has been published on National Grid's website at the link below:

<http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/currentamendmentproposals/>

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 is 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

Using the proposed revised CUSC section 8 text (see Volume 2) as a baseline, the new text in paragraph 8.28.3 shall remain as drafted but the additional wording at the end of paragraph 8.22.4(b) shall be deleted.

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 9th 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 WGAAAs. 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 29th 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 9th 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 WGAA 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 21st July 2010 and consequential delays to the timetable.

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

CUSC Amendment Proposal Form	CAP: 188
Title of Amendment Proposal: Code Governance Review: Governance of Charging Methodologies	
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 3rd June 2010. National Grid Electricity Transmission plc has not objected to the licence modifications. As part of the suite of work strands conducted by the Code Governance Review, it was proposed to incorporate the charging methodologies into the relevant industry codes.</p> <p>Under the existing charging methodology governance arrangements, only National Grid Electricity Transmission plc can propose formal modifications to the electricity transmission charging methodologies. As part of the Code Governance Review the options for opening up the governance of the charging methodologies were consulted on. It was envisaged that this would improve accessibility and transparency of the charging methodologies to users as well as the accountability of the network owners and operators. It would also enable network users and customers to bring forward innovative changes and address any deficiencies in existing methodologies. It is hoped that this may lead to improvements in cost reflectivity which should promote competition.</p> <p>The Code Governance Review Final Proposals require the charging methodologies to be open to change by placing the charging methodologies within the relevant industry code, thereby making them subject to code governance. This was proposed as the most appropriate governance regime for the management of charging methodology modifications. This provides the potential opportunity for affected parties to challenge the Authority's decision on a charging methodology modification by way of an appeal to the Competition Commission following a Panel's recommendation and vote. It should also allow for closer alignment and a more holistic consideration of the charging implications of any associated code modification. In order to achieve this, a new section will be created in the CUSC to incorporate the existing Charging Methodologies. The existing Charging Methodologies will not be changed except to remove parts which are inconsequential and would result in duplication, such as the introductory paragraphs.</p> <p>Ofgem also specified that non-code parties should have the right to raise changes to the charging methodologies where such parties can demonstrate to the Authority that they are materially affected by the methodology and intend to raise a change. The Authority would then designate the party as being "materially affected" thereby allowing them to raise a change to the charging methodology. This will be reflected in the CUSC by amending the list of parties able to raise a change to the CUSC, with specific reference to the charging methodologies and the definition of "materially affected party" as set out in the Transmission Licence.</p> <p>Under the Final Proposals the existing Transmission Charging Methodologies Forum (TCMF) should be continued. In the CUSC the concept of a TCMF will be created, to continue as a discussion forum open to any interested Industry parties. The TCMF will continue to be chaired by National Grid, but its terms of reference will be adopted by the Amendments Panel who will be able to change them. In addition, the Panel could create a Charging Standing Group which could be used as a forum to develop Charging Methodology Amendment Proposals.</p>	

<p>Description of Issue or Defect that Proposed Amendment seeks to Address <i>(mandatory by proposer):</i></p> <p>This Amendment Proposal results from Ofgem’s Code Governance Review Final Proposals and the associated Licence Modifications which National Grid Electricity Transmission plc has not objected to. Therefore National Grid as Licensee is mandated by the new licence obligations to make the changes and additions to the CUSC where applicable.</p>
<p>Impact on the CUSC <i>(this should be given where possible):</i></p> <p>Insertion of a new CUSC section to include the Charging Methodologies. Amendments to Section 8 to refer to the TCMF and add a new category of party able to raise a change to the charging methodologies.</p>
<p>Impact on Core Industry Documentation <i>(this should be given where possible):</i></p> <p>None anticipated</p>
<p>Impact on Computer Systems and Processes used by CUSC Parties <i>(this should be given where possible):</i></p> <p>None anticipated.</p>
<p>Details of any Related Modifications to Other Industry Codes <i>(where known):</i></p> <p>There will be an equivalent UNC modification proposal for the inclusion of the gas transmission and distribution (use of system only) charging methodologies. These modification proposals will not interact with the changes proposed to the CUSC.</p>
<p>Justification for Proposed Amendment with Reference to Applicable CUSC Objectives** <i>(mandatory by proposer):</i></p> <p>National Grid considers that implementation of this Amendment Proposal would better facilitate the following Applicable CUSC Objective:</p> <p>(a): <i>"the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence"</i>, specifically with regard to the new obligations under standard conditions C5, C6, C10 of the licence which National Grid Electricity Transmission plc has not objected to.</p>

<p>Details of Proposer: Organisation’s Name:</p>	<p>National Grid Electricity Transmission plc</p>
<p>Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or “National Consumer Council”)</p>	<p>CUSC Party</p>
<p>Details of Proposer’s Representative: Name: Organisation: Telephone Number: Email Address:</p>	<p>Alex Thomason National Grid Electricity Transmission plc 01926 656379 Alex.thomason@uk.ngrid.com</p>

Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Emma Clark National Grid Electricity Transmission plc 01926 655223 Emma.clark@uk.ngrid.com
Attachments: Yes Developmental GB Transmission Charging Methodologies Forum (GB TCMF) Terms of Reference, dated 20 February 2004. Also available on National Grid's website at http://www.nationalgrid.com/uk/Electricity/Charges/TCMF/	

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

(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: TRANSMISSION CHARGING METHODOLOGIES FORUM TERMS OF REFERENCE



Developmental GB Transmission Charging Methodologies Forum (GB TCMF) Draft Terms of Reference

Purpose of this Paper

This paper sets out the proposed Terms of Reference for National Grid's Developmental GB Transmission Charging Methodologies Forum (TCMF) in light of the proposed implementation of the British Electricity Trading and Transmission Arrangements (BETTA) from 1 April 2005. It states the rationale for such a forum, its proposed membership, meeting frequency, scope of issues covered, appointment of the Chair and Technical Secretary and publication of papers and minutes.

Introduction

The TCMF was established for England and Wales following the introduction of the Connection and Use of System Code (CUSC) and the associated Charging Statements in September 2001. The relevant Transmission Licence Conditions require National Grid to keep the charging methodologies published in the Charging Statements under constant review and to propose modifications to them if such modifications can be shown to better meet a set of Relevant Objectives set out within the Licence.

The TCMF was created to provide a forum where Users' views could be represented and discussed. In addition, it offers an opportunity for National Grid to provide information on and debate with Users its ongoing review of the Methodologies as well as other current charging issues.

In light of the introduction of legislation designed to implement BETTA by 1 April 2005, National Grid believes it is appropriate to amend the format of the current TCMF to incorporate issues pertaining to GB. Until BETTA is implemented, issues pertaining to both England and Wales and GB will need to be discussed and National Grid therefore proposes to extend the existing TCMF to cover all such issues. Once BETTA is implemented, a formal GB TCMF can be established and until such time, National Grid shall refer to the forum as the Developmental GB TCMF.

Meeting Frequency and Location

The Developmental GB TCMF will generally be held every six weeks in either the Coventry area or in Scotland, depending on attendance (to be discussed at the first meeting).

Membership

The following membership is proposed for the Developmental GB TCMF:

- ❖ Existing CUSC parties and all prospective GB CUSC parties, limited to one representative for each party
- ❖ A representative from Ofgem
- ❖ Representatives of end electricity consumers (for example, energywatch, the MEUC)
- ❖ CUSC Panel members and their alternates
- ❖ Scottish Transmission Owners, limited to one representative per TO



- ❖ A lead representative nominated by National Grid who will be supported at TCMF by a number of nominated National Grid experts as appropriate to the agenda.

This structure aims to allow the logistics to be manageable and should ensure that an efficient discussion forum results. The Chairman and National Grid reserve the right to prioritise membership of the Developmental GB TCMF in the event of oversubscription of any meeting.

If the Chairman and National Grid believe a particular issue warrants discussion in a larger forum (i.e. with more than one representative from each CUSC Party), there will be the opportunity for a seminar type session to be organised.

National Grid will constantly review the terms of reference to ensure an effective forum is maintained.

Scope

The Developmental GB TCMF's scope will be the development of the charging principles and methods associated with the GB Use of System Charging Methodology (incorporating both Transmission Network Use of System and Balancing Services Use of System Charges) and the GB Connection Charging Methodology. In addition, it will be used as a forum to update Users on ongoing charging issues in England and Wales and developments in Europe.

For the avoidance of doubt, the Developmental GB TCMF will not be concerned with the impact of existing charges on individual Users as there are already well established routes to deal with such issues. Nor will the forum cover specific contractual or market issues relating to the CUSC or the BSC (or the development of their GB equivalents), as these will be dealt with through the relevant governance structures for these codes.

The standing agenda for the Developmental GB TCMF will be as follows:

- ❖ *Minutes of previous meeting*
- ❖ *Development of GB Charging Methodologies*
 - ❖ *The Use of System Charging Methodology*
 - ❖ *The Connection Charging Methodology*
- ❖ *Current Charging Issues in England and Wales*
- ❖ *European Charging Issues*
- ❖ *Any Other Business*

The GB Charging Methodologies item provides the opportunity for National Grid to discuss recent or forthcoming progress to the development of the GB transmission charging methodologies and for industry participants to raise relevant issues for discussion. It is the intention that this forum would provide the means for Users to raise issues they felt worthy of review to be discussed in a wider forum as well as providing the opportunity for Users to provide comment on National Grid proposed modifications.

National Grid will use the current charging issues agenda item to inform Users of forthcoming or recent correspondence or notifications pertaining to the existing charging



methodologies in England and Wales. In addition, customers can raise issues for discussion or general queries regarding the existing methodologies under this section.

Responsibilities and Appointment of the Chair

Given that the Developmental GB TCMF has been created to play a role in efficiently fulfilling National Grid's licence obligations to review its charging methodologies, the Chair will be appointed by National Grid.

The Chair will be responsible for ensuring the smooth running of the Developmental GB TCMF and ensuring the Terms of Reference are observed.

A Deputy Chair will also be appointed by National Grid.

Responsibilities and Appointment of the Technical Secretary

The Technical Secretary will be appointed by National Grid.

The Technical Secretary will be responsible for the preparation and distribution of the draft agenda prior to each meeting, preparing and distributing the draft minutes (and the summary of meeting report) after each meeting and preparing and distributing the final minutes after approval. Papers will be distributed, if possible, one week prior to the meeting to all members.

Use of National Grid's website

The TCMF has a dedicated page on National Grid's Industry Information website, under the Charging area, and can be accessed at the link below.

www.nationalgrid.com/uk/indinfo/charging/mn_tcmf.html

The website is used as the prime vehicle for notifying meetings, publishing a report following each meeting, publishing final approved minutes and storing presentations and papers. This means that all papers and final minutes will be available to an audience wider than TCMF members. Draft minutes will be circulated to attendees by email and minutes will only be published once they are finalised. A report containing a short summary of proceedings will be published on the website after each meeting.

National Grid proposes to continue to use the existing TCMF webpage as the main method of communication for the Developmental GB TCMF.

National Grid has established a new BETTA website as part of the Industry Information microsite, which includes a GB Charging section. This section will be used as the prime vehicle for publishing documents relating to GB charging consultations and drafting of the GB Charging Statements. The BETTA pages are accessible from the Industry Information microsite homepage at the link below:

www.nationalgridinfo.co.uk

ANNEX 5 – LEGAL ADVICE

The following legal advice was procured by National Grid from CMS Cameron McKenna LLP.

National Grid CUSC Modifications Process Query August 2010

1. Background

- 1.1 Under the governance proposals, a specified set of parties (CUSC Parties, BSC Parties and the National Consumer Council) can raise a modification proposal in respect of the CUSC (including the Charging Methodologies). In addition, the Authority can designate an additional group (Materially Affected Parties) who can only raise a modification in respect of the Charging Methodologies.
- 1.2 The proposed CUSC drafting at issue relates to the way in which Modification Proposals in relation to the Charging Methodologies should be raised, in light of the unique rights of Materially Affected Parties in respect of them, as described above.
- 1.3 Currently the CUSC drafting does not prescribe that modifications to Charging Methodologies must be raised discretely from modifications to other provisions within the CUSC. It has been suggested that a failure to restrict the opportunity to pursue a holistic approach through the drafting could open up the process, and any amendments made pursuant to this process, to legal challenge.
- 1.4 It has been suggested that the CUSC drafting should be amended so that it is obligatory for Modification Proposals in respect of the Charging Methodologies to be made separately to any other Modification Proposal.

2. Rationale for separate approach

- 2.1 This query centres around two perceived issues:
 - 2.1.1 Materially Affected Parties can raise Modification Proposals relating to the Charging Methodologies only; they are not able to raise any other type of Amendment Proposal. It has been argued, therefore, that it would not be open to such parties to raise related modifications through one Modification Proposal, and that this could be perceived as discriminatory.
 - 2.1.2 The CUSC Modification Panel must consider whether a Modification Proposal better facilitates the Applicable CUSC Objectives than the baseline version of the CUSC and make its recommendation to the Authority based on its conclusions. The Applicable CUSC Objectives to be considered vary depending on the type of Modification Proposal

being considered, of which there are three categories: Modification Proposals that relate to the CUSC modification procedures themselves; Modification Proposals that relate to the Charging Methodologies; and Modification Proposals that relate to the remainder of the CUSC. It has been argued that this variation should require separate Modification Proposals to be made in respect of modifications to Charging Methodologies and modifications to CUSC generally.

2.2 These arguments are considered in turn below.

3. Discrimination

3.1 It has been suggested that it is discriminatory to allow some parties to raise a modification proposal in relation to the Charging Methodologies and a proposal in relation to another section of the CUSC together in one Modification Proposal, when Materially Affected Parties can only raise modification proposals in relation to Charging Methodologies.

3.2 The fact that Materially Affected Parties have more limited rights under the CUSC in relation to Modification Proposals, when compared to, for example, CUSC Parties, is an issue that derives directly from the amendments to NGET's Transmission Licence. It is difficult to argue that the holistic (as distinct from the separate modification) approach is in itself inherently discriminatory, as it does not alter the position of the Materially Affected Party set out in the licence: either way, such a party can only raise modification proposals in relation to the Charging Methodologies.

4. Applicable CUSC Objectives

4.1 It has also been suggested that the fact that the CUSC Modifications Panel must take into consideration different CUSC objectives depending on the type of modification proposal under consideration is an argument in favour of obliging parties to raise the different types of modification proposals in separate Modification Proposals. Again, the differing objectives that must be considered depending on the type of modification being proposed are set out in NGET's Transmission Licence. Whether two Modification Proposals were made or not the CUSC Modifications Panel would have to consider a Charging Methodology modification proposal in isolation against the applicable objectives and a modification to another section of the CUSC against its applicable objectives. While separation of such proposals may make this process conceptually easier, pursuing such a "separation" approach administratively would not change this situation or make this evaluation any more or less difficult for the panel.

4.2 In practice, proposals to change both the CUSC generally and the Charging Methodologies are only likely to be submitted in a single Modification Proposal if they were closely related, in which case it might be in the proposer's interest if both proposals stand or fall together. In such a case, a single Modification Proposal that dealt with both modification proposals would ensure this. The drafting does not, however, prevent a proposer, if it wished the two proposals to be entirely separate, making two separate Amendment Proposals (although they could be subject to amalgamation if

they were related in subject-matter).

5. Conclusion

- 5.1 NGET's Transmission Licence does not stipulate that modification proposals to the Charging Methodologies must be made separately to other modification proposals, and obliging parties to submit separate Modification Proposals does not appear to alter the fundamental issues at question. There therefore seems to be no reason to draft such an obligation into the CUSC, especially given the additional administrative burden that would be imposed by doing so. In addition, permitting a holistic approach would seem to avoid any issues and confusion in relation to separating out modification proposals where the division is not absolutely clear at the outset of the process.
- 5.2 It does not seem possible at this stage to decide generally whether it is better to pursue the holistic Amendment Proposal approach or the separate Amendment Proposal approach. This should therefore be reviewed when and if it becomes an issue.
- 5.3 In light of the points outlined above, there would seem to be no basis on which to challenge the process set out in the CUSC in order to meet NGET's licence obligations. It does appear to deliver what Ofgem has requested.

ANNEX 6 – WORKING GROUP ALTERNATIVE AMENDMENT

The Working Group Alternative Amendment was proposed by National Grid Electricity Transmission plc at the Working Group meeting on 27th August 2010. It is identical to the original CAP188 Amendment Proposal in every respect except with regard to the fixed cut-off date for approving charging methodology Amendment Proposals for implementation from the following charging year.

Working Group Alternative Amendment

Under the WGAA, there would be no fixed cut-off date for approving charging methodology Amendment Proposals for implementation from the following charging year.

In order to provide certainty, a standard fixed implementation date of 1st April would apply to all Amendment Proposals to the Charging Methodologies. However, an alternative Implementation Date could be directed by the Authority, if exceptional circumstances applied.

ANNEX 7 – 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