

Amendment proposal:	Connection and Use of System Code (CUSC) - Code Governance Review: Governance of Charging Methodologies (CAP188)		
Decision:	The Authority ¹ directs that the alternative proposal be made ²		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the CUSC and other interested parties		
Date of publication:	14 December 2010	Implementation Date:	30 December 2010

Background to the amendment proposal

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

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

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

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

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

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

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

³ The final proposals appear at:

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

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

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

The amendment proposal

The proposer (NGET) raised CAP188 in July 2010. The proposal would amend the CUSC in three ways:

- inserting a new section into the CUSC to incorporate the existing Statement of Use of System Charging Methodology and Statement of Connection Charging Methodology without amending the content of either document. Changes to the methodologies are currently governed outside of the CUSC and the process for making changes is set out in Standard Licence Conditions C5 and C6 of the electricity Transmission Licence. The proposal would allow changes made to the charging methodologies to be subject to the CUSC governance process;
- introducing a new category of 'materially affected' party into the CUSC, to be designated as such by the Authority, which would be allowed to raise changes to the charging methodologies by showing it was materially affected by either or both methodologies; and
- reflecting the existence of the Transmission Charging Methodologies Forum (TCMF) and allowing the CUSC Panel to adopt and change its terms of reference. The TCMF, chaired by NGET, would continue to act as an informal discussion forum for those wishing to raise issues regarding the charging methodologies.

During the assessment of CAP188, the working group sought further guidance on two issues through industry consultation:

1. Whether proposed changes affecting both the CUSC and the charging methodologies should be progressed as a single amendment proposal or as separate proposals because:
 - the CUSC and charging methodologies have different relevant objectives
 - different types of party could raise proposed changes to the CUSC or charging methodologies, e.g. materially affected parties would not be designated to raise changes to the CUSC.

NGET provided legal advice which indicated that the CGR licence changes did not exclude the raising of a single proposal but were not conclusive on this point.

2. Whether there should be a time limit for charging methodology change proposals to complete the CUSC amendments process to ensure they could be implemented on the following 1 April. The working group suggested a possible cut-off point of the last business day of the previous September for completing the CUSC amendment

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

process. NGET's charging experts indicated that a more flexible approach would be preferable due to the potential time, cost and complexity associated with implementation, e.g. system changes may need more or less time to make.

Responses to the working group consultation supported, by a majority, the use of separate change proposals for CUSC and charging methodology changes and a cut-off point for charging methodology proposals to complete the CUSC amendments process.

The working group chairman, with the support of a majority of the working group 'clarified' the original proposal further to provide that:

- proposers would be required to raise separate change proposals to the CUSC and to the charging methodologies although they could indicate that they were linked
- the CUSC would prescribe the use of a fixed cut-off date (a Panel recommendation vote by the last business day of September) to ensure that a charging methodology change proposal could be implemented on the following 1 April
- the implementation date for charging methodology changes should always be 1 April (the start of the charging year)

NGET raised a Working Group Alternative Amendment (WGAA) as a result of the working group's assessment. The WGAA is identical to the clarified original proposal except that there would be no prescribed fixed cut-off date by which the Panel would have to recommend approval of a charging methodology change proposal for implementation on the following 1 April.

The working group unanimously agreed that both the clarified original and the WGAA better facilitate applicable CUSC objective (a) (efficient discharge by the licensee of its obligations under the Transmission Licence) by bringing the CUSC into line with the proposed CGR licence changes. The working group agreed, by majority, that the WGAA did not better facilitate applicable CUSC objective (b) (facilitate effective competition in the generation and supply of electricity) by reducing certainty about when a charging methodology proposal may be implemented.

The working group chairman chose to allow the WGAA to proceed as the working group had agreed that it did better facilitate applicable CUSC objective (a) compared to the baseline. The working group agreed, by majority, that the clarified original best facilitates applicable CUSC objective (a) compared to the WGAA and the baseline.

In the proposer's view, it is under a mandatory requirement to implement the relevant licence changes in the CUSC to align the licence and the code. By doing so, in the proposer's view, both the original proposal and the WGAA would better facilitate applicable CUSC objective (a) but the additional flexibility regarding the cut-off date set out in the WGAA means that it best facilitates applicable CUSC objective (a).

CUSC Panel⁵ recommendation

On 29 October 2010, the CUSC Panel voted unanimously in favour of CAP188 as better facilitating the applicable objectives. The Panel also voted unanimously in favour of the WGAA as better facilitating applicable objective (a) and, by majority, as better facilitating

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

applicable objective (b). A majority of panel members (7:1) considered that CAP188 would best facilitate both the applicable objectives. The views of Panel members are set out in full in the final Amendment Report (AR).

The Authority's decision

The Authority has considered the issues raised by CAP188 and the WGAA in the final AR dated 9 November 2010. The Authority has considered and taken into account the responses to the consultations undertaken by the working group and NGET on CAP188 and the WGAA which are attached to the AR⁶. The Authority has concluded that:

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

Reasons for the Authority's decision

We note the views of the working group, panel members and respondents to the various consultations. We also note the two issues raised during assessment and the impact of one of those issues on clarifying the original proposal and on development of the WGAA.

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

We agree that the clarified original and the WGAA both better facilitate this objective. NGET is obliged by its licence to ensure that the code amendment processes comply with the relevant licence requirements⁹. Both the clarified original proposal and the WGAA are seeking to align the CUSC with the recent CGR licence changes to ensure the code change process is consistent with those changes.

We consider that as both the clarified original and the WGAA improve alignment between the code amendment process and the licence requirements, both better facilitate this objective compared to the baseline.

Noting there are outstanding issues in relation to the legal text accompanying CAP188 (see below), we consider that both CAP188 amendments improve consistency between the licence requirements and the CUSC amendments process as compared to the baseline and therefore do better facilitate efficient discharge of NGET's licence obligations as compared to the baseline.

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

In our view, both the clarified original and the WGAA better facilitate this objective. Both seek to ensure that a broader range of parties are able to raise charging methodology

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

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

⁸ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

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

change proposals which would improve both the transparency of the process and allow for greater certainty to all market participants that an accessible and open process has been used to develop and determine changes to charging methodologies. Over the longer term, the greater engagement of and participation by a wider group of affected parties should assist in developing charging methodologies in a way that improves competition overall.

Clarified original v. WGAA

The key difference between the original and WGAA is that whereas the original sets a fixed cut-off date by which a charging proposal must complete the CUSC amendments process to ensure implementation by the following 1 April (the required implementation date) and that the latter seeks increased flexibility by removing the cut-off date.

In our view, having increased flexibility recognises that not all proposals require the same time to implement. Some may take longer to implement due to the complexity of the required changes while others may require a shorter period if they are relatively straightforward changes. We note that the aim of the WGAA is not to remove 1 April as the default standard implementation date for all charging proposals but rather it aims to ensure that a proposal which better facilitates the relevant charging methodology objectives and can be implemented by the following 1 April can proceed without the constraint that it has not fully completed the CUSC amendment process by the last business day of the previous September.

Given that the CGR licence modifications were silent on this issue, we consider that there is no discernible difference in the extent to which either the original or the WGAA would discharge the licence obligations. However, we consider that the increased flexibility afforded by the WGAA may allow for a more efficient approach to implementing charging modifications, for instance allowing the timetable to be influenced by the particular circumstances relating to the proposal. We therefore consider that the WGAA would better facilitate applicable objectives (a) and (b) than either the original proposal or the current baseline.

Other issues

We note that both the original proposal and WGAA provide that separate proposals are raised for CUSC and charging methodology changes instead of using a single proposal. We note that NGET's legal advice was not conclusive on this point. We do not consider that the CUSC should be overly prescriptive in this regard and would expect the Panel to administer the CUSC amendments process efficiently and effectively to ensure that proposals are presented in an orderly way and are appropriately prioritised through the process.

Legal text

We note that we raised a number of issues with the CGR CUSC legal text which could not be resolved at the Company Consultation stage of the process. We also note NGET's letter of 9 November 2010¹⁰ which sets out a process for dealing with the outstanding legal text issues through a further amendment proposal. We understand that a review of the CUSC legal text will be undertaken by the CUSC Governance Standing Group. We agree that this is an appropriate way forward and that work on the eight significant

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

concerns in particular that we have highlighted should take precedence. We intend to engage with the Governance Standing Group's review once this begins.

Decision notice

In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority, hereby directs that the alternative to amendment proposal CAP188: '*Code Governance Review: Governance of Charging Methodologies*' be made.

Mark Cox

Associate Partner, Smarter Grids and Governance

Signed on behalf of the Authority and authorised for that purpose