

Modification proposal:	Connection and Use of System Code (CUSC) CMP191: NETSO Consultation in relation to any potential changes to the CUSC which takes place in forums other than the CUSC Modifications Panel		
Decision:	The Authority ¹ has decided to reject this proposal		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the CUSC and other interested parties		
Date of publication:	15 November 2011	Implementation Date:	N/A

Background to the modification proposal

In July 2009, the Third Package² was adopted by the European Union (EU) and aspects of the Third Package came into force on 3 March 2011. The Third Package seeks to achieve consistency in the rules and regulations that apply to the EU internal market for energy (gas and electricity) across the EU by the establishment and adoption of a number of European Network Codes (ENCs).

The process by which the ENCs (for the internal market for electricity) will be adopted is as follows:

- a set of high-level principles, known as Framework Guidelines (FGs) are to be developed by the Agency for the Cooperation of Energy Regulators (ACER) consisting of all the national energy regulatory bodies across the EU. Ofgem is the national regulatory authority for Great Britain (GB) and is a member of ACER. ACER was established when the Third Package came into force;
- the detailed ENCs are to be drafted, based on the high-level principles set out in the FGs, by the European Network of Transmission System Operators for electricity (ENTSO-e) consisting of all the Transmission System Operators (TSOs) across the European Union and several non-EU Countries (34 countries in total). ENTSO-e was also established when the Third Package came into force; and
- the drafted ENCs are to go through an approval process by EU member states known as comitology, used by the European Commission (EC) to make the ENCs legally binding on each Member State.

The proposed ENCs are focused on issues relating to cross border trade and development of the internal energy market. They could potentially have a significant impact on GB industry codes and, once approved, take precedence over the rules in GB codes. NGET is the National Electricity Transmission System Operator (NETSO) for GB and is actively involved in developing the ENCs through the ENTSO-e.

There are consultation and stakeholder engagement processes at a European level for interested stakeholders across the EU to provide views to ACER and ENTSO-e at each stage of the development of the ENCs. National stakeholder forums are not mandated at EU level, leaving Member States to make their own arrangements for stakeholder

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 Details of the Third Package proposals relevant to this modification are set out in EC Regulation 714/2009 and are available on the Eur-lex website:

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0015:0035:EN:PDF>.

engagement on this topic. A number of GB stakeholders are keen that their views on the development of the ENC's are provided at an early stage in the drafting process and that this would complement European level engagement. In the view of these stakeholders, NGET, in its role as NETSO, would be the lead GB TSO involved in the development of the ENC's through ENTSO-e and, as such, should be under an obligation to engage with GB stakeholders.

The modification proposal

CMP191 was raised by Scottish and Southern Energy (SSE) Generation Limited in February 2011. The proposer raised a similarly worded BSC modification and Grid Code user request at the same time³. The proposer considered that there is a risk that NGET will not engage with GB stakeholders at a national level and that this would adversely impact GB stakeholders' ability to provide views to NGET, as the NETSO, during the drafting development phase of the ENC's. In the proposer's view, the potentially significant impact of the ENC's as legally binding rules which take precedence over GB codes means that GB stakeholder engagement should be a requirement on NGET to take effect as early as possible in the drafting process.

CMP191 would create a code obligation on NGET, as the NETSO, to consult with CUSC signatories and consider their views regarding any potential changes to the CUSC which arise from forums other than the CUSC Modifications Panel (the CUSC Panel). The scope of the proposed solution would include any forum on any topic where NGET is attending as the NETSO. In doing so, NGET would be obliged to:

- provide details of any draft proposals, in particular those concerning the ENC's, before they are submitted to the relevant body, e.g. ENTSO-e, including draft text and impact assessments as appropriate,
- seek and take into consideration the views of the CUSC Panel on such proposals before they are submitted to the relevant body, and
- provide prior notification of, and subsequent feedback from, meetings and workshops at which NGET attends as NETSO, particularly regarding the development of the ENC's.

In addition, NGET would be obliged to report any potential or likely CUSC impacts resulting from the development of the ENC's to the CUSC Panel.

During the assessment of CMP191 and the related modifications, the joint Workgroup developed a Workgroup alternative to CMP191. CMP191 Alternative is the same as the original except that it would limit the scope of the obligation on NGET to work undertaken as part of the Third Package only which in NGET's reasonable and prudent opinion could result in a change to the CUSC.

During the assessment of the modifications, a Joint European Standing Group⁴ (JESG) open to all interested GB stakeholders was established on the recommendation of the joint Workgroup and with the approval of the relevant code panels (BSC Panel, CUSC

³ Details regarding BSC modification P271 are available on the Elexon website: <http://www.elexon.co.uk/pages/modproposals.aspx>. Details regarding the Grid Code user request are available on NGET's website: <http://www.nationalgrid.com/uk/Electricity/Codes/>.

⁴ JESG first met on 10 August 2011 and further meetings are scheduled. Papers from JESG meetings appear at: <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/workingstandinggroups/JointEuroSG/>.

Panel and Grid Code Review Panel). The proposed solutions for CMP191 original and the Workgroup alternative both provide for the discharge of NGET's obligation to engage with GB stakeholders through the JESG. The proposer accepted that NGET would take views expressed at the JESG into account but would not be obliged to adhere to them when participating in the development of the ENC's at ENTSO-e.

A majority of the joint Workgroup considered that the Workgroup alternative better facilitates Applicable CUSC Objectives (a) and (b) compared with the original and the CUSC baseline by better defining the scope of the obligation on NGET, one Workgroup member supported the original proposal and one supported neither proposal.

CUSC Panel⁵ recommendation

On 30 September 2011, the CUSC Panel considered the draft Final Modification Report for CMP191. A majority of Panel members recommended that CMP191 Alternative better facilitates the Applicable CUSC Objectives compared with the original and the current CUSC baseline. A minority of Panel members considered that the existing baseline best facilitates the Applicable CUSC Objectives. The views of Panel members can be read in full in the Final Modification Report (FMR).

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Workgroup alternative as set out in the FMR dated 13 October 2011. The Authority has considered and taken into account the responses to the Code Administrator's consultation on the modification proposal and the Workgroup alternative which are attached to the FMR⁶.

The Authority has concluded that implementation of either the modification proposal or the Workgroup alternative will not better facilitate the achievement of the applicable objectives of the CUSC⁷.

Reasons for the Authority's decision

We note the views of the joint Workgroup, NGET and the Panel in reaching our decision. We also note the strong support for national forums for stakeholder engagement on the development of the ENC's. We are also keen for such forums to understand stakeholders' views. One such forum (the JESG) is now established and operating under existing code governance. It is open to all interested GB stakeholders to exchange views with NGET on the development of the ENC's. We have taken this development into account when setting out the reasons for our decision against each of the Applicable CUSC Objectives.

Applicable CUSC Objective (a) 'the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence'

We note the views expressed by some consultation respondents, Workgroup and Panel members that the introduction of a code obligation on NGET to engage with GB

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

⁶ CUSC modification proposals, modification reports and representations can be viewed on the NGET 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

stakeholders on the development of the ENCs would ensure that NGET better meets its licence obligations.

NGET's current licence obligation to bring code changes to the attention of code parties and others with an interest in them is set out, in the case of the CUSC, in Standard Licence Condition C10.6 (b)(i). This obligation currently arises once a code change has been raised. As it is not yet clear, in the case of the ENCs, what consequential changes, if any, will be made to the CUSC, it would be inconsistent and outside the scope of the current licence obligation for NGET to bring potential code changes to the attention of CUSC parties and others when neither the extent, nor the impact, of these changes is clear. However, we do recognise that there is a case for NGET to undertake appropriate and effective engagement with GB stakeholders on the development of the ENCs without the need for a code obligation.

We do not therefore agree that either the original or the alternative proposals better facilitate objective (a).

Applicable CUSC Objective (b) 'facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity'

We note the views expressed in consultation responses and through the Workgroup and the Panel on whether the proposals better facilitate this objective. We note that these views highlight the need for GB stakeholders to have 'greater certainty' from NGET through the code obligation that it will engage with GB stakeholders regarding development of the ENCs though not to adhere to stakeholder views. The responses suggested that:

- NGET could not be aware of GB stakeholders' views without engaging with them;
- having effective stakeholder engagement would improve awareness for both NGET and stakeholders of the issues as development of the ENCs took place; and
- the establishment of the JESG, to which not only NGET and stakeholders but also Ofgem and DECC would be invited, would form a suitable forum for the exchange of views which could form NGET's input to ENTSO-e discussion on the ENCs.

We consider that 'greater certainty' refers to a transparent and open process for GB stakeholder engagement and, so long as there is a suitable forum established for the exchange of views between NGET and stakeholders, the expectations of stakeholders can be met. In this context, 'greater certainty' does not mean that stakeholders will have their views accepted and adhered to when NGET participates at ENTSO-e in the development of the ENCs.

The establishment of the JESG under the existing governance arrangements of the BSC, CUSC and Grid Code provides such a forum and, importantly, the JESG cannot be disbanded without the relevant code panels' agreement.

A long-term commitment by NGET to participate in the JESG in order to engage with stakeholders and exchange views is a more proportionate approach to the lack of engagement identified by the proposal. We note that NGET issued a letter providing such a commitment to CUSC and other interested industry parties on 14 November 2011⁸.

⁸ The letter appears on NGET's website here: <http://www.nationalgrid.com/NR/ronlyres/09E87B4E-6ACF-48B6-B5D5-0C936D8263DF/50044/JESGCommitmentLetter.pdf>.

This formal written commitment by NGET, if suitably backed by appropriate resourcing of the JESG's administration and participation in its discussions to meet the overall aims of the JESG, should help provide reassurance to GB stakeholders that their reasonable expectations are being met. We intend to monitor progress at JESG and encourage all parties to make a positive contribution to the engagement process.

We therefore do not agree that either the original or the alternative proposals better facilitate objective (b).

Other stakeholder engagement

We note that DECC has recently begun its own GB stakeholder engagement process with the participation of Ofgem⁹. As stated above, Ofgem intends to participate and monitor progress at JESG. We consider that these developments recognise the importance of canvassing the views of GB stakeholders, that these views are valuable, and that appropriate, transparent processes for engagement should be available at national level. We look forward to working with GB stakeholders to assist them in understanding the implications of the ENCs and provide us with their views on how the ENCs should develop.

Declan Tomany

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Signed on behalf of the Authority and authorised for that purpose

⁹ The first meeting of the DECC/Ofgem stakeholder forum took place on 6 October 2011.