



National Grid

AMENDMENT REPORT

CUSC Proposed Amendment CAP003

CUSC Indemnity Provision

The purpose of this document is to assist the Authority in their decision of whether to approve CAP003

Amendment Ref	CAP003
Issue	1.0
Date of Issue	23 rd January 2002
Prepared by	National Grid

DOCUMENT CONTROL

Version	Date	Author	Change Reference
0.1	7/1/02	National Grid	Initial Draft for internal comment
0.2	10/1/02	National Grid	Draft for Industry comment
1.0	23/1/02	National Grid	Formal version for submission to the Authority

DISTRIBUTION

Name	Organisation
Authority	Ofgem
CUSC Parties	Various
Panel Members	Various
National Grid Industry Information Website	

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1.0 SUMMARY AND RECOMMENDATIONS

Summary

- 1.1 The subject of indemnity provisions within the CUSC was raised at a meeting of the CUSC Panel on 21st September 2001. The Panel was informed of the Authority approval and subsequent implementation of BSC modification Proposal P5, which proposed to extend the scope of indemnity for the indemnity beneficiaries under Section 2.9 of the BSC. The CUSC Panel agreed that a similar amendment should be proposed to the CUSC to resolve the same inadequacies.
- 1.2 Amendment Proposal (CAP003) was subsequently proposed by National Grid and submitted for consideration at the CUSC Amendments Panel Meeting on 9th November 2001. At the meeting, the Panel determined that the Proposal should proceed directly to Wider Industry Consultation by National Grid.
- 1.3 The National Grid Consultation Paper for CAP003 was published on the National Grid CUSC website. Copies of the Consultation Paper were also sent to Core Industry Document Owners and CUSC Parties. Responses to the CAP003 Consultation were invited for submission by 9th January 2002.

Recommendations

Amendments Panel View

- 1.4 The view of the Amendments Panel is that CAP003 be approved for implementation.

National Grid Recommendation

- 1.5 National Grid recommends that the Amendment Proposal be implemented.

2.0 PURPOSE AND SCOPE OF THE REPORT

- 2.1 This Amendment Report has been 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. Section 8.20 of the CUSC sets out the mandatory information to be contained in an Amendment Report.
- 2.2 This document details the nature of the CUSC changes proposed by CAP003, and also includes the views of the Amendments Panel and National Grid, and indicates any issues which arose from the wider industry consultation. Copies of each of the responses to the consultation are also included in this document as Annex 2.

3.0 THE PROPOSED AMENDMENT

- 3.1 In the current wording of the CUSC, CUSC Parties must indemnify certain persons against any loss caused during the proper exercise of their duties. Also, where it was found that the Indemnified Person was acting properly, each CUSC Party irrevocably and unconditionally waive any liability against any Indemnified Person and any rights, remedies and claims against any indemnified person.
- 3.2 'Indemnified Persons' are defined in paragraph 8.11.1 of the CUSC as:
- Each Panel Member
 - The Panel Secretary
 - Members of a Working Group
 - Members of a Standing Group
- 3.3 If this amendment is approved and implemented, the indemnity and waiver will be expanded to cover Indemnified Persons when they believe "in good faith" they are acting in the proper exercise of their powers.
- 3.4 In the Amendment Proposal the view was put forward that such extension of the indemnity arrangements in the CUSC would better facilitate the obligation to operate modification procedures. The rationale for this view is that the amendment would reduce the need for inefficient procedures to be developed and for costly legal advice to be sought in order to ensure that indemnified persons are not requested to make any decisions or take any actions that may not be within their vires.

4.0 PROPOSED IMPLEMENTATION AND TIMESCALES

- 4.1 It is proposed that CAP003 receive approval in order to allow Indemnified Persons to benefit as soon as possible.
- 4.2 With regard to implementation, National Grid have noted and supported that it may be appropriate for CAP003 to be implemented retrospectively from 21st September 2001 to tie it in with the date of the first CUSC Panel meeting to ensure that the extended indemnity protection encompasses all activities of Indemnified Persons undertaken virtually from CUSC Implementation. However this is subject to the determination of the Authority.
- 4.3 No impact has been identified for any change requirements to any Core Industry Documents or other Industry Documents as a result of CAP003.

5.0 IMPACT ON CUSC & PROPOSED LEGAL TEXT

5.1 The Proposed Amendment will require an amendment to sections 8.11.1 and 8.11.3 of the CUSC. The proposed legal text to give effect to the Amendment Proposal is set out below (proposed new text shown underlined):

8.11.1 *Subject to paragraph 8.11.2 all CUSC Parties shall jointly and severally indemnify and keep indemnified each Panel Member, the Panel Secretary and each member of a Working Group and Standing Group (“Indemnified Persons”) in respect of all costs (including legal costs), expenses, damages and other liabilities properly incurred or suffered by such Indemnified Persons when acting in or in connection with his office under the CUSC, or in what he in good faith believes to be the proper exercise and discharge of the powers, duties, functions and discretions of that office in accordance with the CUSC, and all claims, demands and proceedings in connection therewith other than any such costs, expenses, damages or other liabilities incurred or suffered as a result of the wilful default or bad faith of such Indemnified Person.*

8.11.3 *The CUSC Parties agree that no Indemnified Person shall be liable for anything done when acting properly in or in connection with his office under the CUSC, or anything done in what he in good faith believes to be the proper exercise and discharge of the powers, duties, functions and discretions of that office in accordance with the CUSC. Each CUSC Party hereby irrevocably and unconditionally waives any such liability of any Indemnified Person and any rights, remedies and claims against any Indemnified Person in respect thereof.*

6.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

6.1 The Applicable CUSC Objectives are set out in paragraph 1 of Condition C7F of the Transmission Licence, 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.

Paragraph 6 of Condition C7F also provides that:

“The licensee shall establish and operate procedures for the modification of the CUSC (including procedures for the modification of the modification procedures themselves), so as to better facilitate achievement of the applicable CUSC objectives.”

- 6.2 An extension of the indemnity provisions contained in the CUSC would enable Indemnified Persons to reasonably use their own judgement in the powers of their office, this would enable the process of CUSC Amendments and the business of the CUSC Panel, to be managed more efficiently.
- 6.3 If CAP003 is not approved and the indemnity provisions are not extended, Indemnified Persons may become over-cautious whilst undertaking the duties of their office. This has the potential to lead to inefficiencies in the decision-making processes that are crucial to the progression of amendments to the CUSC.

7.0 IMPACT ON CUSC PARTIES

- 7.1 No impact has been identified on CUSC Parties.

8.0 IMPACT ON CORE INDUSTRY DOCUMENTS

- 8.1 No impact has been identified on Core Industry Documents.

9.0 ALTERNATIVE AMENDMENTS

- 9.1 No Alternative Amendments to CAP003 were put forward during the Industry Consultation.

10.0 SUMMARY OF VIEWS AND REPRESENTATIONS

- 10.1 This Section contains a summary of the views and representations made during the consultation period.

Amendments Panel

- 10.2 The view of the Amendments Panel is that the Proposed Amendment as detailed in this report be approved and implemented, as it will reduce the need for the inefficient procedures to be developed to further protect those benefiting from the indemnity provisions.

Core Industry Document Owners

- 10.3 No representations were received from Core Industry Document Owners.

National Grid

- 10.4 National Grid recommends that as CAP003 better facilitates the obligation on National Grid to operate the CUSC modification procedures, the Proposed Amendment should be approved and the CUSC be amended to incorporate the text as set out in Section 5 of this report.

Responses to Consultation

10.5 National Grid received a total of 2 responses to the consultation on CUSC Amendment CAP003, both of which were supportive. The following table provides an overview of the representations received. Copies of the representations received are attached as Annex 2.

Reference	Company	Supportive	Comments
CAP003-CR-01	Seeboard	Yes	CUSC Panel Members should be afforded the same indemnity as provided to the BSC Panel.
CAP003-CR-01	British Gas Trading, Accord Energy, Centrica KL & Centrica PB	Yes	Support the Amendment Proposal, but comment that it would be helpful to define who "members" of the Working or Standing Group are, to be clear to whom the indemnity extends.

10.6 In response to the comment received during the consultation from British Gas Trading (Ref CAP003-CR-01 as detailed above and contained in Annex 2). It has been noted that although there may be benefit in adding a generic definition, this would affect the drafting and scope of CAP003 as consulted on. The view of National Grid is that this would need further consideration and a further amendment proposal to allow parties to comment specifically on any definition and to pick up any necessary changes to the relevant parts of the CUSC.

Other unresolved comments

10.7 Comment was received from British Energy (contained in Annex 2) that it may be appropriate for CAP002 to receive retrospective implementation. This has been reflected in paragraph 4.2 of this Amendment Report where it has also been noted that details of implementation are subject to the determination of the Authority.

Annex 1 - Amendment Proposal Form

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 CUSC Panel can determine more clearly whether the proposal should be considered by a Working Group or go straight to wider National Grid Consultation.

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 Proposer will be informed by the Panel Secretary.

The completed form should be returned to:

Mark Cox
Panel Secretary
Commercial Development
National Grid Company plc
National Grid House
Kirby Corner Road
Coventry, CV4 8JY

Or via e-mail to:

CUSC.Team@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 which is a CUSC Party shall be deemed to have granted this Licence.)

Proposers Name:

(Name of party making the proposal. An Amendment Proposal may be made by a CUSC Party, a BSC Party or by “energywatch”)

National Grid

Proposers Representative:

(The name of the person representing the Proposer (and their alternate) for the purposes of the Amendment Process)

Mike Metcalfe (Mark Cox)

Organisations Name and Address:

(Organisation on whose behalf the Amendment is proposed)

National Grid House
Kirby Corner Road
Coventry
CV4 8JY

Capacity in which the Organisation Proposes to make an Amendment:

(i.e. CUSC Party, BSC Party or “energywatch”)

CUSC Party

Description of the issue or defect which the proposed Amendment seeks to address:

(This should be in reasonable, but not excessive detail)

In the current wording of the CUSC (paragraphs 8.11.1 and 8.11.3) the scope of indemnity as defined may leave Indemnified Persons open to liability if it is found that they were not acting in the proper exercise of the discretions of their office. It is therefore possible that Indemnified Persons would feel it necessary to seek legal advice to clarify the scope of their powers before embarking on any of their duties and functions which would hold up Panel business and adversely affect the efficiency of the CUSC Amendment Process.

Description of the proposed Amendment and of its nature and purpose:

(This should be in reasonable but not excessive detail)

This Amendment Proposal seeks to extend the indemnity set out in the CUSC to cover actions taken by Indemnified Persons in good faith.

Proposal for revised words to amend the CUSC:

8.11.1 “Subject to paragraph 8.11.2 all CUSC Parties shall jointly and severally indemnify and keep indemnified each Panel Member, the Panel Secretary and each member of a Working Group and Standing Group (“Indemnified Persons”) in respect of all costs (including legal costs), expenses, damages and other liabilities properly incurred or suffered by such Indemnified Persons when acting in or in connection with his office under the CUSC, or in what he in good faith believes to be the proper exercise and discharge of the powers, duties, functions and discretions of that office in accordance with the CUSC, and all

claims, demands and proceedings in connection therewith other than any such costs, expenses, damages or other liabilities incurred or suffered as a result of the wilful default or bad faith of such Indemnified Person.

8.11.3 The CUSC Parties agree that no Indemnified Person shall be liable for anything done when acting properly in or in connection with his office under the CUSC, or anything done in what he in good faith believes to be the proper exercise and discharge of the powers, duties, functions and discretions of that office in accordance with the CUSC. Each CUSC Party hereby irrevocably and unconditionally waives any such liability of any Indemnified Person and any rights, remedies and claims against any Indemnified Person in respect thereof.”

The proposed insertion of “*what he in good faith believes to be...*” would serve to extend indemnity and hence reduce the need for potentially costly and inefficient procedures to be developed in order to ensure that all decisions put to the Panel for their consideration are consistent with their powers. The Proposal would enable both Panel business and the Amendment Process to be managed more efficiently.

An indication of those parts of the CUSC which would require amendment in order to give effect to (or would otherwise be affected by) the proposed amendment and an indication of the nature of those amendments or effects:

(This should be given where possible)

Change to paragraphs 8.11.1 and 8.11.3 should not affect any other parts of the CUSC.

Reasons why the Proposer believes that the proposed Amendment would better facilitate achievement of the Applicable CUSC Objectives as compared with the current version of the CUSC with background information in support thereof:

The terms of its Transmission Licence require National Grid to establish and operate procedures for modification of the CUSC (including procedures for modification of the modification procedures themselves), so as to better facilitate achievement of the Applicable CUSC Objectives. An extension of the indemnity contained in the CUSC as put forward in this Amendment Proposal would better facilitate the obligation to operate the CUSC amendment procedures efficiently and hence achievement of the Applicable CUSC Objectives.

An indication of the impact of the proposed Amendment on Core Industry Documents:

(This should be given where possible)

None identified.

An indication of any existing Modifications to Core Industry Documents that are related to this Amendment Proposal:

(Please provide information if known)

Modification Proposal P5 to the BSC has recently received direction from the Authority to be implemented. The BSC Modification was substantially the same as this amendment proposal to the CUSC in that it has extended indemnity for the Indemnity Beneficiaries under the BSC.

An indication of the impact of the proposed Amendment on relevant computer systems and processes used by CUSC Parties:

(This should be given where possible)

None identified.

A statement to the effect that the Proposer acknowledges that on acceptance of the proposal for consideration by the Amendments Panel a Proposer shall grant a Licence in accordance with Clause 8.15.7 of the CUSC:

(A signature to this effect must be given by a proposer which is not a CUSC Party)

The Proposer is a CUSC Party.

Annex 2 – Representations Received

Reference	CAP003-CR-01
Company	Seeboard

From: Purdy, Jonathan [JPurdy@seeboard.com]
Sent: 16 November 2001 18:04
To: Groves, Emma
Subject: RE: CUSC - CAP003 Panel Indemnities, Consultation paper

The indemnity provided for CUSC panel members should in principle be the same as that provided to BSC panel members

On that basis I support the proposed changes.

Jonathan Purdy
Internal: 65724
External: 01444-477724
Fax External: 01444-477724
jpurdy@seeboard.com

Reference	CAP003-CR-02
Company	British Gas

word/cap003



National Grid Company plc
National Grid House
Kirby Corner Road
Coventry
CV4 8JY

For the Attention of Ms E Groves
– Commercial Development

Dear Emma,

Re: CUSC Amendment CAP003 – CUSC Panel Indemnities

Further to the publication of your consultation document in respect of the above Amendment proposal, British Gas Trading, Accord Energy, Centrica KL and Centrica PB, offers the following comments.

We believe that the issue of indemnification of certain parties under the Amendment process is worthy of debate. However, as long as the principle is contained within the CUSC we believe that it is acceptable for the scope of the protection to be extended as detailed in the proposal, and we therefore support this Amendment.

In respect of the legal drafting proposed with the Amendment, we believe that “Members” of Working Groups and Standing Groups should be a defined term to clarify the limitation on protection to those whom it was intended should benefit. We suggest that Working Group and Standing Group Members should be defined as “Those persons selected by the Amendments Panel in accordance with 8.17.3 and 8.18.2 to be a Member of a Working or Standing Group.”

Should you wish to discuss any of the comments contained in this response please do not hesitate to contact me.

Yours sincerely,

Simon Goldring

energy management group

Charter Court
50 Windsor Road
Slough
Berkshire
SL1 2HA

Tel. (01753) 758051
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Our Ref.
Your Ref.

23 January 2002

From: Phillips Steve [steve.phillips@british-energy.com]
Sent: 15 January 2002 11:38
To: Groves, Emma
Subject: RE: CAP003 Amendment Report

Emma,

Thank you for the opportunity to comment on the Amendment Report.

BE supports the Amendment Proposal (AP) and welcomes the consistency with the BSC provisions to extend the indemnity afforded to those "Indemnified Persons" as defined in CUSC 8.11.1

With respect to an implementation date, under the circumstances it may be appropriate to apply the AP from the 21st September 2001, being the date when the issue was raised at the CAP to ensure that the additional protection encompasses all activities of those identified as 'indemnified persons' virtually from CUSC implementation.

Regards
Steve Phillips
Senior Trading Consultant
Market Development
British Energy Power & Energy Trading

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