



National Grid

WORKING GROUP REPORT

CUSC Amendment Proposal CAP088 Application of late payments of Commercial Debts (Interest) Act 1998

**Prepared by the CAP088 Working Group
for submission to the Amendments Panel**

Amendment Ref	CAP088
Issue	1.0
Date of Issue	19/07/05
Prepared by	CAP088 WG

I DOCUMENT CONTROL

a National Grid Document Control

Version	Date	Author	Change Reference
1.0	19/07/05	NGT	Final WG Report

b Distribution

Name	Organisation
The Gas and Electricity Markets Authority	Ofgem
CUSC Parties	Various
Panel Members	Various
National Grid Industry Information Website	

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1.0 SUMMARY AND RECOMMENDATIONS

Executive Summary

- 1.1 CUSC Amendment Proposal CAP088 – Application of late payments of Commercial Debts (Interest) Act 1998 (see Annex 3) was raised by NGC at May CUSC Panel. The CUSC Amendments Panel determined that a Working Group should be established to consider this proposal prior to industry consultation. The Terms of Reference along with CAPs 089, 090 and 091 were determined (see Annex 1) with a requirement to report back to the August 2005 CUSC Amendments Panel Meeting.
- 1.2 It was agreed in the CAP088 Terms of Reference to expedite CAP088 as soon as practicable and the Working Group believe that CAP088 and the Working Group Alternative are now ready to proceed to Industry Consultation. This Working Group Report has been prepared in accordance with Section 8.17 of the CUSC and it is the view of the Working Group that the Terms of Reference have been discharged.
- 1.3 The Working Group has evaluated the proposal against the Applicable CUSC Objectives in accordance with its Terms of Reference. One Working Group Alternative has been developed and is presented along with the Original Amendment.
- 1.4 The Working Group has assessed the original Amendment Proposal and Working Group Alternative against the Applicable CUSC Objectives. The results of this assessment are contained within Section 4 and 5 of this report.

Working Group Recommendation

- 1.5 The CAP088 Working Group recommends that the Amendment Proposal and Working Group Alternative should now proceed to wider industry consultation in accordance with CUSC Section 8.17.12(b).

2.0 INTRODUCTION

- 2.1 CAP088 seeks to address and codify Ofgem's recommendations within its Network Operator Best Practice guidelines by amending Clause 6.6.5 of CUSC, and NGC as the Proposer believes this would better facilitate the applicable CUSC objectives.
- 2.2 Clause 6.6.5 of CUSC currently states the rate of 4% over base rate, accrued daily, can be levied on any CUSC party that fails to pay on the due date any amount properly due. This Amendment is proposed in order to allow the application of the rate detailed within the Application of Late Payment of Commercial Debts (Interest) Act 1998 which was given effect to via a statutory instrument. The rate is set twice a year on 30 June and 31 December, and is applicable for the following six-month periods i.e. 1 July to 31 December and 1 January to 30 June respectively. NGC believes the application of the rate detailed within the Act would provide the most appropriate incentive to ensure that payments are made in accordance with prevailing contracts, as currently it would allow for interest to be levied on late paid items at a rate equal to a specified base rate plus eight percentage points per annum, and is in line with best practice.

3.0 PURPOSE AND SCOPE OF WORKING GROUP

- 3.1 The Working Group is responsible for assisting the CUSC Amendments Panel in the evaluation of CUSC Amendment Proposal CAP088 tabled by National Grid Company at the Amendments Panel meeting on 20th May 2005.
- 3.2 The proposals must be evaluated to consider whether they better facilitate 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.

Outcome of Working Group Discussions

- 3.3 It was clarified that the Application of Late Payments of Commercial Debts (Interest) Act 1998 was given effect to via a statutory instrument and the rate as set out in the statutory instrument is 8% as a mandatory figure. There were two views in the Working Group as to what application of the Late Payment statutory instrument meant in terms of the associated interest rate. NGC believed that it is most appropriate to comply with the rate as detailed in the instrument (ie: currently 8%) as this increases the transparency as to how the rate is derived and provides an approach consistent with the Network Operator Best Practice Guidelines.
- 3.4 Some of the Working Group believed that it was possible to develop an Alternative, which was linked to the application of a proportion of the rate as set out in the Statutory Instrument. The Working Group proposed an Alternative Amendment in which the level of interest charged was a set percentage of the rate detailed in the Act. In order to provide a safeguard to ensure that this Alternative Amendment did not result in a reduction of existing arrangements it further proposed the inclusion of the current arrangements as a minimum level. Under the Working Group Alternative Amendment the interest rate levied would be:-
- Base Rate, plus 75% of interest rate detailed in Act (currently 8%)
 - Minimum level set at Base Rate plus 4%
- This was considered by some Working Group members to be a more appropriate rate, which could be increased by a future Amendment if the need arose.
- 3.5 There was a majority in favour of the Original Amendment, but a significant minority were in favour of the Working Group Alternative Amendment. The Working Group concluded that CAP088 and the Working Group Alternative should proceed to wider industry consultation.

4.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

- 4.1 An amendment to the CUSC as outlined in both the Original CAP088 proposal and the Working Group Alternative Amendment will enable National Grid to more easily and efficiently discharge its obligations under the Act and the Transmission Licence and fulfill its obligations to facilitate competition in the generation and supply of electricity.

4.2 Members of the Working Group (including NGC) considered that the intent of CAP088 was to align the processes with those published in the Network Operator Best Practice Guidelines. Therefore, the Original CAP088 Amendment proposal which details application of the rate detailed within the Late Payments of Commercial Debts (Interest) 1998 Act (as detailed in paragraph 3.53 of the Best Practice Guidelines), better facilitates the applicable CUSC objectives.

4.3 Some members of the Working Group considered that the Working Group Alternative Amendment would better facilitate the applicable CUSC objectives than the Original Amendment and would enable National Grid to more easily and efficiently discharge its obligations under the Act and the Transmission Licence and fulfill its obligations to facilitate competition in the generation and supply of electricity. NGC does acknowledge that the Working Group Alternative would provide an increased incentive for any CUSC party to make payments in accordance with prevailing contracts, over the current CUSC baseline.

5.0 PROPOSED IMPLEMENTATION AND TIMESCALES

5.1 It is proposed that should the Authority approve the amendment proposal for CAP088 and this should be implemented 10 business days after the Authority decision.

6.0 IMPACT ON CUSC

6.1 CAP088 and the Working Group Alternative will require a change to Clause 6.6.5 of the CUSC, as detailed in the legal text at annex 2.

7.0 IMPACT ON INDUSTRY DOCUMENTS

Impact on Core Industry Documents

7.1 None

Impact on other Industry Documents

7.2 None

Annex 1 – Working Group Terms of Reference and Membership

TERMS OF REFERENCE FOR CAPs 088-091 WORKING GROUP

RESPONSIBILITIES

1. The Working Group is responsible for assisting the CUSC Amendments Panel in the evaluation of CUSC Amendment Proposals CAPs 088-090 inclusive tabled by National Grid Company and CAP091 tabled by BizzEnergy at the Amendments Panel meeting on 20th May 2005.
2. The proposal must be evaluated to consider whether it better facilitates achievement of the applicable CUSC objectives. These can be summarised as follows:
 - (b) the efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence; and
 - (c) 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.

SCOPE OF WORK

4. The Working Group must consider the issues raised by the Amendment Proposals and consider if the proposals identified better facilitate achievement of the Applicable CUSC Objectives.
5. In addition to the overriding requirement of paragraph 4, the Working Group shall consider and incorporate appropriate legal drafting in the report to implement CAPs 088-091 or any Working Group Alternative Amendment (WGAA) developed by the Group.
6. The Working Group is responsible for the formulation and evaluation of any WGAA's arising from Group discussions which would, as compared with the Amendment Proposal, better facilitate achieving the applicable CUSC objectives in relation to the issue or defect identified.
7. The Working Group should become conversant with the definition of Working Group Alternative Amendments 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 Working Group Alternative Amendment if the Member(s) genuinely believes the Alternative would better facilitate the achievement of the Applicable CUSC Objectives. The extent of the support for the Amendment Proposal or any Working Group Alternative Amendment arising from the Working Group's discussions should be clearly described in the final Working Group Report to the CUSC Amendments Panel.

8. The Working Group Chairman should provide progress reports to the CUSC Amendments Panel meetings scheduled for 24th June and 29th July. If some of the Amendment Proposals can be progressed earlier than the timetable in this paragraph then the Working Group should report earlier to the Panel on those Amendment Proposals. The Working Group is to submit their final report to the CUSC Panel Secretary on 11th August 2005 for circulation to Panel Members. The conclusions will be presented to the CUSC Panel meeting on 19th August 2005.

MEMBERSHIP

9. It is recommended that the Working Group has the following members:

Chair	Ben Graff
National Grid	Paul Murphy
Industry Representatives	Carl Wilkes (npower)
	Keith Munday (BizzEnergy)
	Lee Selway (EdF Energy)
	John Capener (British Energy)
	Bob Brown (Cornwall Consulting)
	Neil Smith (e.on)
	Gavin Ferguson (Centrica)

Authority Representative	Dipen Gadhia
Technical Secretary	Richard Dunn

[NB: Working Group must comprise at least 5 Members (who may be Panel Members) and will be selected by the Panel with regard to WG List held by the Secretary]

10. The membership can be amended from time to time by the CUSC Amendments Panel. Any additional nominations for Membership of the Group after the CUSC Panel meeting scheduled for 20th May should be provided to the CUSC Panel Secretary.

RELATIONSHIP WITH AMENDMENTS PANEL

11. 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 CUSC Panel Secretary.
12. 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 CUSC Panel Secretary.

MEETINGS

13. 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

14. The Working Group Chairman shall prepare a final report to the Amendments Panel scheduled for 19th August 2005 responding to the matter set out in the Terms of Reference.
15. A draft Working Group Report must be circulated to Working Group members with not less than five business days given for comments.
16. Any unresolved comments within the Working Group must be reflected in the final Working Group Report.
17. The Chairman (or another member nominated by him) will present the Working Group report to the Amendments Panel as required.

Annex 2 – Proposed Text to modify CUSC

Part A - Text to give effect to the Proposed Amendment

Change Marked Version

6.6.5 Subject to Section 4, if any **CUSC** Party fails to pay on the due date any amount properly due under the **CUSC** or any **Bilateral Agreement** such **CUSC Party** shall pay to the **CUSC Party** to whom such amount is due interest on such overdue amount from and including the date of such failure to (but excluding) the date of actual payment (as well after as before judgement) at the ~~rate of 4% over Base Rate~~ Prescribed Rate ~~for the time being and from time to time.~~ Interest shall accrue from day to day.

Add new definition to CUSC Section 11 as follows

“Prescribed Rate”

the rate of interest set for the relevant period as the statutory interest rate for the purposes of the Late Payment of Commercial Debts (interest) Act 1998

PART B – Text to give effect to the Proposed Working Group Alternative Amendment

Change Marked Version

6.6.5 Subject to Section 4, if any CUSC Party fails to pay on the due date any amount properly due under the CUSC or any Bilateral Agreement such CUSC Party shall pay to the CUSC Party to whom such amount is due interest on such overdue amount from and including the date of such failure to (but excluding) the date of actual payment (as well after as before judgement) at ~~the rate of 4% over Base Rate~~ **Prescribed Rate** ~~for the time being and from time to time.~~ Interest shall accrue from day to day.

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Add new definition to CUSC Section 11 as follows

“Prescribed Rate”	the greater of 4% over Base Rate or the rate of interest set for the relevant period as the statutory interest rate for the purposes of the Late Payment of Commercial Debts (interest) Act 1998 provided that in calculating this rate the per cent per annum figure over the official dealing rate shall be 75% of the per cent per annum set as such statutory interest rate;.
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Annex 3 – Amendment Proposal Form

CUSC Amendment Proposal Form	CAP:088
Title of Amendment Proposal:	
Application of late payments of Commercial Debts (Interest) Act 1998	
Description of the Proposed Amendment <i>(mandatory by proposer):</i> Clause 6.6.5 states the rate of 4% over base rate, accrued daily, can be levied on any CUSC party that fails to pay on the due date any amount properly due. This amendment is proposed in order to allow the application of the late payment of Commercial Debts (Interest) Act 1998. This would act as an additional incentive to ensure that payments are made in accordance with prevailing contracts, as it allows for interest to be levied on late paid items at a rate equal to a specified base rate plus eight percentage points per annum. This rate is set twice a year on 30 June and 31 December each year. This rate is applicable for the following six-month periods i.e. 1 July to 31 December and 1 January to 30 June respectively. It is recommended that this amendment goes to a working group.	
Description of Issue or Defect that Proposed Amendment seeks to Address <i>(mandatory by proposer):</i> The amendment seeks to address and codify Ofgem's recommendations within its Network Operator Best Practice guidelines.	
Impact on the CUSC <i>(this should be given where possible):</i> Amendment to Clause 6.6.5	
Impact on Core Industry Documentation <i>(this should be given where possible):</i> None	
Impact on Computer Systems and Processes used by CUSC Parties <i>(this should be given where possible):</i> None	
Details of any Related Modifications to Other Industry Codes <i>(where known):</i> None	

Justification for Proposed Amendment with Reference to Applicable CUSC Objectives** (mandatory by proposer):	
An amendment to the CUSC as outlined above will enable National Grid to more easily and efficiently discharge its obligations under the Act and the Transmission Licence and fulfill its obligations to facilitate competition in the generation and supply of electricity.	
Details of Proposer: Organisation's Name:	National Grid Transco
Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or "energywatch")	CUSC Party
Details of Proposer's Representative: Name: Organisation: Telephone Number: Email Address:	Paul Murphy NGT 019260656330 paul.murphy@ngtuk.com
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Toby Thornton NGT 01926656384 toby.thornton@ngtuk.com
Attachments (Yes/No): If Yes, Title and No. of pages of each Attachment:	

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:

Richard Dunn
Panel Secretary
Commercial Frameworks
National Grid Company plc
NGT House
Warwick Technology Park
Gallows Hill
Warwick, CV34 6DA
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 that is a CUSC Party shall be deemed to have granted this Licence).

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

Annex 4 – Internal Working Group Procedure

CAPs088-091 Working Group

INTERNAL WORKING PROCEDURES

1. Notes and actions from each meeting will be produced by the Technical Secretary (provided by National Grid) and circulated to the Chairman and Working Group members for review.
2. The Meeting notes and actions will be published on the National Grid CUSC Website after they have been agreed at the next meeting or sooner on agreement by Working Group members.
2. The Chairman of the Working Group will provide an update of progress and issues to the Amendments Panel each month as appropriate.
4. Working Group meetings will be arranged for a date acceptable to the majority of members and will be held as often as required as agreed by the Working Group in order to respond to the requirements of the Terms of Reference set by the Amendments Panel.
5. If within half an hour after the time for which the Working Group meeting has been convened the Chairman of the group is not in attendance, the meeting will take place with those present.
6. A meeting of the Working Group shall not be invalidated by any member(s) of the group not being present at the meeting.