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Direct Dial: 020-7901-7491

15 July 2005

The National Grid Company, CUSC Signatories and  
Other Interested Parties

Our Ref: IND/COD/CUSC/CAP087

Dear Colleague,

**Amendment to the Connection and Use of System Code (“CUSC”) - Decision and Notice in relation to Proposed Amendment CAP087: “Revisions to Request for Urgency Process”.**

The Gas and Electricity Markets Authority (the “Authority”<sup>1</sup>) has considered the issues raised in the Amendment Report<sup>2</sup> in respect of Proposed Amendment CAP087: “Revisions to Request for Urgency Process”.

The National Grid Company plc (“NGC”) recommended to the Authority that CAP087 should be approved, and if approved the implementation date should be 10 Business Days after the Authority’s decision.

Having considered the Amendment Report and NGC’s recommendation and having regard to the Applicable CUSC Objectives<sup>3</sup> and Ofgem’s wider statutory duties,<sup>4</sup> the Authority has decided to direct a modification to the CUSC in line with Proposed Amendment CAP087.

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<sup>1</sup> Ofgem is the office of the Authority. The terms “Ofgem” and “the Authority” are used interchangeably in this letter.

<sup>2</sup> CAP087 Amendment Report dated 13 June 2005.

<sup>3</sup> The Applicable CUSC Objectives are contained in Standard Condition C10 of the licence to transmit electricity treated as granted to NGC under Section 6 of the Electricity Act 1989 (the “Transmission Licence”) and are: the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and 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.

<sup>4</sup> Ofgem’s statutory duties are wider than the matters that the Panel must take into consideration and include amongst other things a duty to have regard to social and environmental guidance provided to Ofgem by the government.

A separate letter contains the direction to NGC to modify the CUSC in accordance with CAP087 as set out in the Amendment Report.

This letter explains the background to Proposed Amendment CAP087, and sets out the Authority's reasons for its decision. This letter constitutes notice by the Authority under section 49A of the Electricity Act 1989 in relation to the direction.

## **Background**

Section 8.21 of the CUSC governs the process under which a proposal should be treated as an Urgent Amendment Proposal.

This process begins when a CUSC Party recommends to the Panel Secretary that a proposal should be treated as an Urgent Amendment Proposal. The Panel Secretary notifies the chairman that such a recommendation has been made and the Panel Chairman<sup>5</sup> then endeavours to obtain the views of the Amendments Panel, or in the event that the Panel Chairman can not contact all Panel Members, to obtain the majority view of those who can be contacted, as to whether an Amendment should be given urgent status. Where no other Panel Members can be contacted the CUSC provides for the Panel Chairman to decide that the proposal should be treated as an Urgent Amendment Proposal.

In the event that the Panel (or the Panel chairman in the event that no other members of the Amendments Panel can be contacted) considers a proposal should be granted urgent status the Panel Chairman must consult with the Authority as to whether the Amendment Proposal in question is an Urgent Amendment Proposal, and if so, the procedure and timetable which should apply to it. The Amendments Panel may not treat an Amendment Proposal as an Urgent Amendment Proposal except with the prior consent of the Authority.

These provisions mean that the Panel Chairman only consults with the Authority if the Amendments Panel<sup>6</sup> or the Panel Chairman considers that the proposal should be treated as an Urgent Modification Proposal; if the Amendments Panel or the Panel Chairman<sup>7</sup> do not consider a proposal should be granted urgent status the Amendment Proposal is not considered (in terms whether it should be treated as urgent) by the Authority. It was suggested that there may be a flaw in the current process, in that the Authority does not always get the chance to determine the outcome of an urgency request.

Consequently Proposed Amendment CAP087 was raised by BGT on 15 April 2005 and was considered at the CUSC Amendments Panel Meeting on 22 April 2005. At that meeting the

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<sup>5</sup> If the Panel chairman is unable to discharge his duties under the code the Panel Secretary is obligated to undertake those functions.

<sup>6</sup> Or in the event that the Panel Chairman is not able to reach all members of the Amendments Panel, the majority of those Amendments Panel members contacted.

<sup>7</sup> (as the case may be)

Amendments Panel determined that National Grid should initiate a period of wider industry consultation on the issues raised by the Amendment Proposal. A consultation paper was issued on 27 April 2005 with responses invited by 1 June 2005. The final Amendment Report was submitted to the Authority on 13 June 2005.

### **The Proposed Amendment**

CAP087 seeks to amend section 8.21 of the CUSC such that the Panel Chairman must consult with the Authority on all requests for urgency.

It was the view of the proposer that the Amendment Proposal would enhance the consistency of the process and therefore also improve the efficiency of the change management process. The Proposer also considered this change would facilitate competition by giving the market comfort that if an issue is considered by a particular CUSC Party to be urgent the timetable for progressing the Amendment Proposal would be considered by the Authority who would make the final decision on whether the Amendment Proposal merits urgency.

### **Respondents' views**

NGC issued a consultation paper on 27 April 2005 inviting responses from CUSC Parties and interested parties by 1 June 2005.

NGC received five responses to the consultation in respect of Proposed Amendment CAP087, all of which expressed support for the Proposed Amendment.

A number of the responses received considered that there was merit in the Authority considering all requests for urgency as this would increase the efficiency and transparency of the Amendments procedure and in so doing would better enable National Grid to discharge its obligations under the Act and the licence and Applicable CUSC Objective (a).

One respondent highlighted that although it did not perceive any particular tangible benefits would arise in the context of the CUSC if CAP087 were to be approved, the respondent was generally supportive of what it perceived to be the principle behind the Amendment, namely the promotion of consistency between codes.

One respondent noted that the Amendments Panel and Ofgem could be using different criteria to determine whether an Amendment Proposal should be treated as urgent. As such the respondent considered it inappropriate that the Authority cannot approve a request for urgency unless the Amendments Panel has already approved it. Another respondent commented that CAP087 would improve the consistency of decision making and ensure regulatory best practice by allowing all requests for urgency to be considered against Ofgem's wider statutory duties, rather than by the Panel considering a request solely against the Applicable CUSC Objectives.

Another respondent recognised the view that this amendment could result in more references being put to the Authority on the grounds of urgency. It considered that CAP087 would not

result in frivolous requests for urgency being made, and as such was only able to anticipate an overall improvement in the efficiency of the amendment process.

The respondents' views are summarised and contained in the Amendment Report in respect of Proposed Amendment CAP087.

### **Amendments Panel Members' views**

Members of the Amendments Panel submitted no formal responses during the consultation period.

### **NGC's recommendation**

National Grid recommended to the Authority that CAP087 should be implemented and that the Implementation Date should be 10 Business Days after the Authority's decision.

### **Ofgem's view**

Having considered the Amendment Report, Ofgem considers, having regard to its statutory duties and the Applicable CUSC Objectives, that Proposed Amendment CAP087 would better facilitate the achievement of the Applicable CUSC Objectives (a) and (b).

Historically, Ofgem has been satisfied that the Amendments Panel has discharged its obligations regarding the consideration of urgency requests made by Parties to the CUSC in an appropriate, proportionate and consistent manner. Whilst this is the case Ofgem recognises that CAP087 will improve the consistency of the change management process by ensuring all requests for urgency are considered by the Authority and as such would better facilitate the achievement of Applicable CUSC Objective (a) and (b).

Further to the above, Ofgem considers that CAP87 will increase transparency of the urgency decision making process as the number of urgency requests that come to Ofgem for determination will increase. By making the rationale for all urgency decisions fully visible to all parties CAP087 would better facilitate the achievement of Applicable CUSC Objective (b).

Ofgem agrees that benefits in terms of consistency and co-ordination can be found in change management structures where Ofgem holds a decision making role on certain issues. Having considered the points raised by industry participants in the context of CAP087, Ofgem further agrees that these benefits occur not only in the context of the approval or rejection of change proposals, but also decisions on urgency.

Ofgem considers that approval of CAP087 will not result in frivolous urgency requests. An established line of precedent exists in the context of urgency decisions and the proposer of an Amendment Proposal must also provide justification as to why the Amendment Proposal should be treated as Urgent. Whilst it may not be possible for a Party to predict the outcome of an urgency decision by the Authority in all cases, Ofgem considers the precedent of urgency

decisions is sufficient to give an indication to parties of when it is appropriate to request urgency for an Amendment Proposal.

### **The Authority's Decision**

The Authority has therefore decided to direct that Proposed Amendment CAP087, as set out in the Amendment Report, should be made and implemented. A separate letter contains this direction.

If you have any queries in relation to the issues raised in this letter, please feel free to contact me on the above number.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Harrison', written in a cursive style.

**Sarah Harrison**

**Managing Director, Corporate Affairs**

Signed on behalf of the Authority and authorised for that purpose by the Authority