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Direct Dial: 020-7901-7491

28 January 2005

The National Grid Company, CUSC Signatories and
Other Interested Parties

Our Ref: IND/COD/CUSC/CAP075

Dear Colleague,

Amendment to the Connection and Use of System Code (“CUSC”) - Decision and Notice in relation to Proposed Amendment CAP075: “Arrangements for Replacing Resigning Panel Members and Alternates”.

The Gas and Electricity Markets Authority (the “Authority”¹) has carefully considered the issues raised in the Amendment Report² in respect of Proposed Amendment CAP075 “Arrangements for Replacing Resigning Panel Members and Alternates”.

The National Grid Company plc (“NGC”) recommended to the Authority that the CAP075 Consultation Alternative Amendment be approved with an implementation date within 10 Business Days of the Authority’s decision.

Having carefully considered the Amendment Report and NGC’s recommendation and having regard to the Applicable CUSC Objectives and Ofgem’s wider statutory duties,³ the Authority has decided to direct a modification to the CUSC in line with the CAP075 Consultation Alternative Amendment. A separate letter contains the direction to NGC to modify the CUSC in accordance with the CAP075 Consultation Alternative Amendment as set out in the Amendment Report.

This letter explains the background to Proposed Amendment CAP075 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 (the “Act”) in relation to the direction.

Background

Amendment Proposal CAP075 was raised by NGC on 17 June 2004 and was submitted for consideration at the CUSC Amendments Panel Meeting on 25 June 2004. The Amendment

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

² CAP075 Amendment Report dated 23 December 2004.

³ 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.

Proposal was raised to mitigate the effects of a Panel Member or Alternate Panel Member resigning by removing, in certain circumstances, the requirement for an election to be held to elect a replacement Member.

At the Panel meeting on 25 June the Panel determined that the Amendment Proposal should be considered by the Governance Standing Group acting as the Working Group. The Working Group developed a Working Group Alternative Amendment (for dates of meetings refer to the Amendment Report). On 24 September 2004 the Panel agreed that the matter could proceed to industry consultation.

NGC issued a consultation paper regarding CAP075 on 5 October. A Consultation Alternative Amendment was proposed, and NGC issued further consultation on 7 December.⁴ NGC submitted an Amendment Report on CAP075 to the Authority for decision on 23 December 2004.

The Proposed Amendment

The CUSC currently provides that if a Panel Member or Alternate Panel Member ceases to hold office during their term, and has more than 6 months of their term left, NGC must hold an election for a replacement. The Proposer (NGC) considered that this had the potential to be lengthy and inefficient process.

The Proposed Amendment suggested that when a Panel Member resigned, they should nominate their replacement from the existing pool of Alternate Members. If the Panel Member chose not to nominate a replacement, the Alternate Member who had received the highest number of votes at the last Panel election would replace the resigning Panel Member.

The Proposed Amendment further suggested that the CUSC be amended so that the current requirement for up to five Alternate Members be changed to a requirement for at least three and a maximum of ten Alternate Members. When an Alternate Member became a Panel Member, the Alternate Member would not be replaced unless the number of Alternate Members dropped to less than three. If there were less than three Alternate Members (as a result of promotion to Panel Membership or resignation) then the existing election process would be used to replace the Alternate Panel Member.

The Proposer suggested that the Proposed Amendment would provide more efficient arrangements for the operation of the CUSC Panel, which would better facilitate achievement of Applicable CUSC Objective (a), by facilitating NGC's efficient discharge of its obligations under its Transmission Licence and the Electricity Act.⁵

⁴ The consultation period for CAP075 exceeded the timeframe set out in paragraph 8.16.4 of the CUSC, but following a written request from NGC, Ofgem had advised that it did not object to an extension of this timetable.

⁵ 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:

- (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.

Working Group Alternative Amendment

The Working Group considered the Proposed Amendment and developed a Working Group Alternative Amendment which was unanimously supported by the Group.

In summary, the Working Group Alternative Amendment suggested that Panel Members who resign (and who do not cease to hold office for any other reason) should, before they resign, be able to nominate a successor from the Alternate Panel Members. If the Panel Member chooses not to nominate a successor, then the Alternate Panel Member who received the highest number of votes in the previous CUSC Panel election would become the replacement Panel Member.

The Working Group Alternative Amendment also suggested that there would be up to five Alternate Panel Members at any time. Alternate Panel Members would only be replaced if the total number of Alternates fell to zero more than six months before the end of the term of office of a CUSC Panel, and the replacement would occur by an election to elect up to five Alternate Panel Members.

Respondents' views

NGC issued a consultation paper in respect of Proposed Amendment CAP075 on 5 October 2004 inviting responses from CUSC Parties and interested parties.

NGC received two responses to the consultation in respect of Proposed Amendment CAP075, both of which supported the Working Group Alternative Amendment. One of the respondents also proposed a Consultation Alternative Amendment. The complete texts of the respondents' submissions are contained in the Amendment Report in respect of Proposed Amendment CAP075.

Consultation Alternative Amendment

The Consultation Alternative Amendment provided some edits to the legal text for the Working Group Alternative Amendment. Following discussions between the proposer of the Consultation Alternative Amendment and NGC about the extent of these edits, NGC issued a further consultation about the Consultation Alternative Amendment on 7 December 2004. NGC received two responses to this consultation (one from the proposer of the Consultation Alternative Amendment). Both respondents supported the Consultation Alternative Amendment. The complete texts of the respondents' submissions are contained in the Amendment Report in respect of Proposed Amendment CAP075.

NGC's recommendation

NGC recommended that the CAP075 Consultation Alternative Amendment be implemented within 10 Business Days of the Authority's decision.

Ofgem's view

Having carefully considered the Amendment Report, Ofgem considers, having regard to the Applicable CUSC Objectives and its statutory duties, that the CAP075 Consultation Alternative Amendment would better facilitate the achievement of the Applicable CUSC Objectives. Ofgem considers that both the Working Group and Consultation Alternative Amendment would better facilitate the achievement of the Applicable CUSC Objectives, but considers that the Consultation Alternative Amendment would do so more effectively than the Working Group Alternative.

Ofgem considers that the Consultation Alternative Amendment will reduce the need for mid-term elections of CUSC Panel Members and Alternate Panel members. This could potentially reduce the administrative burden and costs incurred by NGC in holding these elections, and incurred by Users in participating in the elections. Ofgem further considers that the potential savings offered by the Consultation Alternative Amendment will not result in a significant reduction of the democratic nature of the CUSC Panel. This is because the Consultation Alternative Amendment ensures that replacement Panel Members are selected from the pool of Alternate Panel Members who have already been elected by Users in the previous Panel election.

Ofgem considers the Consultation Alternative Amendment will better facilitate achievement of Applicable Objective (a) by potentially reducing the administrative burden and costs to NGC of holding mid-term elections for Panel Members without any corresponding diminution in the representative nature of the Panel composition and therefore facilitating the effective discharge of NGC's obligations under its Transmission Licence and the Act.

The Authority's Decision

The Authority has therefore decided to direct that the CAP075 Consultation Alternative Amendment, as set out in the Amendment Report, should be made and implemented. An attached 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 'A. N. Simpson', written over a horizontal line.

Nick Simpson

Director, Modifications

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