



Direct Dial: 020-7901-7435

16 December 2003

The National Grid Company, CUSC Signatories and
Other Interested Parties

Your Ref: CAP051
Our Ref: IND/COD/CUSC/CAP051

Dear Colleague,

Amendment to the Connection and Use of System Code (“CUSC”) - Decision and Decision in relation to Proposed Amendment CAP051: “Initiation of the Amendment Procedures by the Amendments Panel”.

The Gas and Electricity Markets Authority (the “Authority”¹) has carefully considered the issues raised in the Amendment Report² in respect of Proposed Amendment CAP051 “Initiation of the Amendment Procedures by the Amendments Panel”.

The National Grid Company plc (“NGC”) recommended to the Authority that Alternative Amendment (A) should be approved with an implementation date of 10 days after the Authority’s decision.

The Authority has decided to direct a modification to the CUSC.

This letter explains the background to Proposed Amendment CAP051, as set out in the Amendment Report, and sets out the Authority’s reasons for its decision. In addition, this letter contains a direction to NGC to modify the CUSC in respect of Proposed Amendment CAP051.

This letter constitutes the notice by the Authority under Section 49A of the Electricity Act 1989 in relation to the direction.

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

² CAP051 Amendment Report dated 18 September 2003;

Background

Following the approval of an Urgent Amendment Proposal, Paragraph 8.23.5 of the CUSC contains a provision for the Amendments Panel to initiate the Amendment Procedures to consider whether an alternative solution could better facilitate achievement of the Applicable CUSC Objectives in respect of the subject matter of the original Amendment Proposal. This is considered necessary as the expeditious evaluation required as part of the urgent amendments process may have resulted in less rigorous evaluation in some instances.

The Proposer of Proposed Amendment CAP051 stated that the CUSC is unclear as to how the Amendments Panel should initiate the Amendment Procedures. Paragraph 8.15.1 of the CUSC refers to the Amendments Panel submitting an Amendment Proposal under Paragraphs 8.21.8 and 8.23.5. However, the Proposer believes that as a Proposed Amendment would already have submitted a proposed remedy for the issue, it is unclear what information could be included in a Proposed Amendment submitted by the Panel under Paragraph 8.23.5 to satisfy the mandatory requirement to describe the issue that the Proposed Amendment seeks to address.

Amendment Proposal CAP051 was raised by NGC on 8 May 2003 and was submitted for consideration to the CUSC Amendments Panel Meeting on 16 May 2003. At the meeting, the Amendments Panel determined that the Amendment Proposal CAP051 should be evaluated by the Governance Standing Group acting as a Working Group. The Working Group provided an initial report to the Amendments Panel on 25 July 2003. The Amendments Panel agreed that CAP051 should proceed to wider industry consultation. The consultation paper was issued on 7 August 2003 with responses invited by 5 September 2003. The final Amendment Report was submitted to the Authority on 18 September 2003.

The Proposed Amendment

Proposed Amendment CAP051 seeks to clarify the process for the review of Amendments made to the CUSC under Paragraph 8.23.5 where such a review is deemed necessary by the Amendments Panel. The Proposed Amendment suggests that the Amendments Panel may establish a Standing Group (or use an appropriate existing Standing Group) as a body to consider whether another solution might better facilitate achievement of the Applicable CUSC Objectives in respect of the subject matter being proposed.

The Proposer considered that Proposed Amendment CAP051 would better facilitate achievement of the Applicable CUSC Objective C7F.1(a) for the efficient discharge by NGC of the obligations imposed upon it under the Act and by its Transmission Licence³. The Proposer considered that Proposed Amendment CAP051 would improve efficiency and clarity of the CUSC and the Amendments Procedures.

³ The Applicable CUSC Objectives are contained in Standard Condition C7F of the licence to transmit electricity treated as granted to NGC under Section 6 of the Electricity Act 1989 as amended (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's views

Two members of the Working Group agreed that the change proposed by Proposed Amendment CAP051 was not required as they believed that the existing evaluation route for an Amendment Proposal could be followed. One member noted that a suitably amended legal text similar to that contained in BSC F2.9.7 would make it easier for Parties dealing with both the CUSC and BSC governance procedures.

BSC (F2.9.7) states that:

"...the Panel may or (where it appears to the Panel that there is a reasonable level of support for a review amongst parties) shall, following such modification, submit the modification to review by a Modification Group on terms specified by the Panel in order to consider and report as to whether any alternative modification could, as compared with such modification, better facilitate achievement of the Applicable BSC Objective(s) in respect of the subject matter of such modification"

Two members of the Working Group raised concerns regarding the internal working of the Group. It was felt by these two members that there had been inadequate evaluation of the Proposed Amendment as a result of E-mail correspondence with no formal meetings. As a result they could not support the Working Group Report as they were of the opinion that the Group's Terms of Reference had not been met.

Alternative Amendment (A)

The Proposer of Alternative Amendment (A), whilst supporting the purpose and nature of the Proposed Amendment CAP051, recommended that a Proposed Amendment based more closely upon the existing wording contained within the equivalent BSC section (F2.9.7) would be more appropriate than the original Proposed Amendment. The Proposer of Alternative Amendment (A) considered that the original Amendment Proposal may be viewed as too restrictive regarding the definitions for when the Panel can submit an amendment for review. Furthermore, the same Proposer believed that the original Amendment Proposal did not indicate clearly that, following evaluation by the Standing Group as to whether there was a better alternative amendment available, it would then be the responsibility of CUSC Users to raise such alternative amendments. The Proposer of Alternative Amendment (A) believes that their suggestion was clearer in these regards as it seeks to provide greater clarity and improve efficiency in the Amendment Procedures, thus enabling NGC to discharge their obligations more efficiently.

It is the view of the Proposer that Alternative Amendment (A) would better facilitate achievement of the Applicable CUSC Objectives compared with the Proposed Amendment.

Alternative Amendment (B)

The Proposer of Alternative Amendment (B) is of the opinion that the existing wording of the CUSC permits the Panel to instigate further work where concerns with the CUSC remain. The Proposer considers that where the panel is not able to define the issues to be considered by a Working Group, then it is not appropriate to create a Standing Group to consider future possibilities following an Urgent Amendment.

The respondent proposing Alternative Amendment (B) suggested that if the Authority deemed it necessary to make any change to the CUSC, then the Amendments Panel should be given the option to raise an Amendment Proposal to address a specific area as well as the option to use a Standing Group to review the issue under consideration.

It is the view of this Proposer that Alternative Amendment (B) would better facilitate achievement of the Applicable CUSC Objectives compared with the Proposed Amendment and Alternative Amendment (A).

Respondents' views

NGC issued a consultation paper on 7 August 2003 inviting views from CUSC Parties and interested parties.

NGC received four responses to the consultation in respect of Proposed Amendment CAP051.

The Proposer of Alternative Amendment (A) believed that their suggestion would improve efficiency in the Amendment Procedures and thus enable NGC to discharge their obligations more efficiently. The Proposer of Alternative Amendment (A) argued that Proposed Amendment CAP051 may be seen as too restrictive as to when the Amendments Panel can submit an Urgent Amendment for review. Furthermore, the respondent also believed that CAP051 did not indicate clearly enough that, following consideration by the Standing Group as to whether there was an Alternative Amendment that better facilitated achievement of the Applicable Objectives, it was an issue for CUSC users to raise such an Alternative Amendment. These views were supported by another respondent.

The Proposer of Alternative Amendment (B) considered that the existing CUSC wording allows the Amendment Panel the opportunity, should an amendment be made in accordance with the Transmission Licence other than in Section 8 of the CUSC, to initiate further work in the event that the Amendment Panel are of the view that there are still outstanding concerns with the relevant part of the CUSC. They believed that if the Amendments Panel is not able to define the issues, a Working Group be set up to consider such issues (using the normal procedures of a Party raising a Proposed Amendment). This respondent considered it not appropriate to create a Standing Group merely to consider the possibilities following a Proposed Amendment. However, the respondent highlighted that should it be decided Paragraph 8.23.5 of the CUSC needs to be clarified then the option to raise a Proposed Amendment by the Amendments Panel to address a specific area as well as the option to use a Standing Group to review the issue should be clearly stated as set out in Alternative Amendment (B).

A further respondent argued that it is unclear how the implementation of CAP051 could better facilitate achievement of the Applicable CUSC Objectives. Unlike Urgent Amendments (CAP050), where insufficient time may have been available to fully consider alternatives, the process for considering "standard" Amendment Alternatives already exists and that the necessary methodology is already in place for circumstances where an issue needs to be addressed.

The respondents' views are summarised and contained in the Amendment Report in respect of Proposed Amendment CAP051.

Amendments Panel Members' views

No formal responses were submitted by Amendments Panel Members to the consultation on Proposed Amendment CAP051. However, the Amendments Panel agreed with the Governance Standing Group's assessment in 2002 that an Amendment Proposal should be brought forward to clarify the position on the review process for Amendment Procedures.

NGC's recommendation

NGC recommended to the Authority that Alternative Amendment (A) should be approved with an implementation date of 10 days after the Authority's decision. NGC considers that Alternative Amendment (A) will better facilitate achievement of the Applicable CUSC Objectives over the Proposed Amendment.

Ofgem's view

Having had regard to its statutory duties, the Applicable CUSC Objectives and the consultation responses, Ofgem is of the view that Alternative Amendment (A) would better facilitate achievement of the Applicable CUSC Objective C7F.1(a) for the efficient discharge by NGC of the obligations imposed upon it under the Act and by its Transmission Licence as compared with Proposed Amendment CAP051, Alternative Amendment (B) and the current version of the CUSC.

Proposed Amendment

Ofgem considers that, in order for the Amendments Panel to be able to properly discharge its duties under Section 8 of the CUSC, the creation of a review mechanism for Amendment Proposals is desirable providing that this is conducted as efficiently and transparently as possible whilst actively embracing the views of industry within this process to improve the quality of decisions taken.

It is acknowledged by Ofgem that NGC's original Proposed Amendment is robust and able to cope with a changing and evolving industry structure. The Authority considers that in the interest of efficiency that it is preferable that the Amendments Panel retains the discretion to establish a Standing Group (or use an existing Standing Group) to evaluate other possible solutions that might better facilitate the Applicable CUSC Objectives but that this should not become a mandatory obligation. The Authority believes that the original Proposed Amendment meets these objectives.

The Authority therefore supports the nature and purpose of the Proposed Amendment CAP051. It is Ofgem's view that the legal text submitted in respect of the original Proposed Amendment would better facilitate achievement of the Applicable CUSC Objectives C7F.1(a).

Alternative Amendment (A)

Ofgem recognises that Alternative Amendment (A) seeks to build upon the Proposed Amendment further by more closely aligning the legal text with that of the relevant section within the BSC F2.9.7. It is Ofgem's considered view that, whilst Alternative Amendment (A) may achieve this, it also imposes a mandatory obligation upon the Panel to consider whether an amendment should be considered by a Standing Group. The Authority is of the opinion that

this should not be a mandatory requirement of the Panel as retaining such discretion may improve efficiency in cases where it is clear that the amendment adequately addresses the issue raised.

Alternative Amendment (B)

In considering Alternative Amendment (B), the Authority considers that, when compared with the Proposed Amendment and Alternative Amendment (A), this Alternative Amendment is likely to become both costly and time consuming in seeking the achievement of the Applicable CUSC Objectives. The Authority does not share the view that there is a need for the Amendments Panel to have the ability to raise an Amendment Proposal given that this option is available to any CUSC Party to do similar. Given these reasons, The Authority considers that there is no significant benefit to be gained in relation to the achievement of the Applicable Objectives of the CUSC through the implementation of Alternative Amendment (B).

It has been noted by Ofgem that two members of the Working Group raised concerns regarding the internal workings of the Group. As a direct result, they were unable to support the Working Group Report.

The Authority's Decision

The Authority has therefore decided to direct that Alternative Amendment (A), as set out in the Amendment Report, should be made and implemented.

Direction Under Condition C7F.7(a) of NGC's Transmission Licence

Having regard to the above, the Authority, in accordance with Condition C7F.7(a) of the licence to transmit electricity treated as granted to NGC under Section 6 of the Electricity Act 1989 as amended (the "Transmission Licence"), hereby directs NGC to modify the CUSC in respect of Proposed Amendment CAP051, as set out in the Amendment Report.

The modification is to be implemented and take effect from 10 days after the Authority's decision.

In accordance with Condition C7F.7(b) of NGC's Transmission Licence, NGC shall modify the CUSC in accordance with this direction of the Authority.

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 'N. Simpson', with a horizontal line underneath.

Nick Simpson
Director of Industry Codes

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