



Direct Dial: 020-7901-7355

11 October 2002

The National Grid Company, CUSC Signatories and
Other Interested Parties

Your Ref: CAP023
Our Ref: IND/COD/CUSC/CAP023

Dear Colleague,

Amendment to the Connection and Use of System Code (“CUSC”) - Decision and Direction in relation to Proposed Amendment CAP023: “Paragraph 8.15.4 - Rejection of a proposal”.

The Gas and Electricity Markets Authority (the “Authority”¹) has carefully considered the issues raised in the Amendment Report² in respect of Proposed Amendment CAP023 “Paragraph 8.15.4 - Rejection of a proposal”.

The National Grid Company plc (“NGC”) recommended to the Authority that:

- (i) Proposed Amendment CAP023 be rejected; and
- (ii) Alternative Amendment (A) be rejected; and
- (iii) Alternative Amendment (B) 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 CAP023, 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 Alternative Amendment (B).

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

² CAP023 Amendment Report dated 26 September 2002.

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

Background

At the CUSC Amendments Panel Meeting on 22 March 2002, the Amendments Panel established the Governance Standing Group (GSG) to consider and report on issues relating to the current Amendment Process as set out in section 8 of the CUSC. One of the issues for consideration by the GSG was the current requirement that the Panel Secretary reject a new Amendment Proposal if, in the opinion of the Amendments Panel, the proposal has substantially the same effect as a Rejected Amendment Proposal and is submitted within two months of the Authority's decision not to direct NGC to amend the CUSC in the manner set out in the Rejected Amendment Proposal. The GSG considered that this requirement should be amended to allow the Amendments Panel the discretion to decide whether or not a new Amendment Proposal should be rejected if, in the opinion of the Panel, the proposal has substantially the same effect as a Rejected Amendment Proposal and is submitted within two months of the Authority's decision in respect of the Rejected Amendment Proposal. This view was incorporated into the CSG report submitted to the Amendments Panel at the Amendments Panel Meeting on 16 August 2002.

Proposed Amendment CAP023 was raised by NGC on 18 July 2002 and was submitted for consideration at the CUSC Amendments Panel Meeting on 26 July 2002. At the meeting the Panel determined that the Proposed Amendment should proceed to wider consultation by NGC. A consultation paper was issued on 14 August 2002 with responses invited by 12 September 2002. The final Amendment Report was submitted to the Authority on 26 September 2002.

The Proposed Amendment

The issue that the Proposed Amendment seeks to address is the current requirement that the Panel Secretary reject a new Amendment Proposal if, in the opinion of the Amendments Panel, the proposal has substantially the same effect as a Rejected Amendment Proposal and is submitted within two months of the Authority's decision in respect of the Rejected Amendment Proposal. This requirement is set out in paragraph 8.15.4(b) of the CUSC.

The Proposer considered that this requirement could cause an unnecessary two month delay in the Amendment Procedures and that this potential for delay represents an inefficiency in the Amendment Procedures. It was the view of the Proposer that such a delay would be especially inefficient in instances where the Authority supported the nature and purpose of an Urgent Amendment Proposal but decided not to direct NGC to amend the CUSC on the basis of an "error in legal drafting or a similar technicality".

The Proposer therefore considered that to allow the Amendments Panel to have the discretion to decide whether or not a new Amendment Proposal should be rejected if, in the

opinion of the Panel, the proposal has substantially the same effect as a Rejected Amendment Proposal and is submitted within two months of the Authority's decision in respect of the Rejected Amendment Proposal, 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.

As stated previously, the issue that the Proposed Amendment seeks to address is the requirement that a new Amendment Proposal be rejected if, in the opinion of the Amendments Panel, the proposal has substantially the same effect as a Rejected Amendment Proposal and is submitted within two months of the Authority's decision in respect of the Rejected Amendment Proposal. This requirement is set out in paragraph 8.15.4(b) of the CUSC. The legal text submitted in order to give effect to the Proposed Amendment addresses not only the requirement set out in this paragraph, but also that set out in paragraph 8.15.4(a), which concerns Pending Amendment Proposals. An unintentional consequence of the Proposed Amendment would therefore be to allow the Amendments Panel to have the discretion to decide whether or not a new Amendment Proposal should be rejected if, in the opinion of the Panel, the proposal has substantially the same effect as a Pending Amendment Proposal.

Alternative Amendment (A)

Alternative Amendment (A) was submitted during wider consultation in respect of Proposed Amendment CAP023. The proposer of Alternative Amendment (A) supported the nature and purpose of the Proposed Amendment but considered that the legal text submitted was too limited in its intended effect. The proposer considered that the legal text should be modified to make explicit the requirement on the Amendments Panel that it take an active role in determining whether or not a new Amendment Proposal should be rejected and whether or not to direct the Panel Secretary to reject such an Amendment Proposal.

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

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.

Alternative Amendment (B)

Alternative Amendment (B) was submitted during wider consultation in respect of Proposed Amendment CAP023. The proposer of Alternative Amendment (B) supported the nature and purpose of the Proposed Amendment but considered that the legal text submitted would have broader consequences than that identified by the Proposer of the Proposed Amendment in that it would allow the Amendments Panel to have the discretion to decide whether or not a new Amendment Proposal should be rejected if, in the opinion of the Panel, the proposal has substantially the same effect as a Pending Amendment Proposal. The proposer of Alternative Amendment (B) considered that the nature and purpose of the Proposed Amendment was that the Amendments Panel should have the discretion to decide whether or not to reject a new Amendment Proposal only in the case of Rejected Amendment Proposals and not in the case of Pending Amendment Proposals.

It was the view of the proposer that Alternative Amendment (B) would better facilitate achievement of the Applicable CUSC Objectives compared with the Proposed Amendment.

Respondents' views

NGC issued a consultation paper on 14 August 2002 inviting responses from CUSC Parties and interested parties.

NGC received six responses to the consultation in respect of Proposed Amendment CAP023, of which three respondents supported the Proposed Amendment, two respondents supported the nature and purpose of the Proposed Amendment but proposed Alternative Amendments to modify the legal text submitted in respect of the Proposed Amendment and one respondent expressed neither support nor opposition to the Proposed Amendment.

The respondent that expressed neither support nor opposition to the Proposed Amendment stated that the BSC currently allows the BSC Panel to have the discretion to decide whether or not to accept submission of a Modification Proposal.

The respondents' views are summarised and contained in the Amendment Report in respect of Proposed Amendment CAP023.

Amendments Panel Members' views

All Amendments Panel Members who expressed a view considered that Proposed Amendment CAP023 would better facilitate achievement of the Applicable CUSC Objectives.

NGC's recommendation

NGC recommended to the Authority that Alternative Amendment (B) should be approved with an implementation date of 10 days after the Authority's decision.

NGC considered that the legal text submitted to give effect to both the Proposed Amendment and Alternative Amendment (A) is too broad since it would allow the Amendments Panel to have the discretion to decide whether or not to reject a new Amendment Proposal if, in the opinion of the Panel, the proposal has substantially the same effect as either a Pending or a Rejected Amendment Proposal. It was the view of NGC that the nature and purpose of the Proposed Amendment was to allow the Amendments Panel to have discretion only in the latter of these two cases, and that the legal text submitted in respect of Alternative Amendment (B) best gives effect to this.

Ofgem's view

Ofgem considers, having regard to its statutory duties, that Alternative Amendment (B), as set out in the Amendment Report, would better facilitate achievement of the Applicable CUSC Objective C7F.1(a).

Ofgem notes that currently under the CUSC the Panel Secretary is required to reject an Amendment Proposal if, in the opinion of the Amendments Panel, the proposal has substantially the same effect as a Rejected Amendment Proposal and is submitted within two months of the Authority's decision in respect of the Rejected Amendment Proposal. Ofgem acknowledges that there may be instances where the Authority supports the nature and purpose of a Proposed Amendment but, owing to an error or oversight in, or unintentional consequence of, the legal text submitted, considers that the Proposed Amendment should not be approved.

Ofgem considers that in such instances 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, would be better facilitated if a new Amendment Proposal, identical in its nature and purpose to the Rejected Amendment Proposal but with its legal text amended so as to correct the error or oversight in, or unintentional consequence of, the original legal text, could be submitted as soon as practicable after the Authority's decision in respect of the Rejected Amendment Proposal.

Ofgem therefore supports the nature and purpose of the Proposed Amendment. It is Ofgem's view that the legal text submitted in respect of Alternative Amendment (B) best gives effect to the nature and purpose of the Proposed Amendment and therefore that Alternative Amendment (B) would better facilitate achievement of the Applicable CUSC Objective C7F.1(a).

The Authority's Decision

The Authority has therefore decided to direct that Alternative Amendment (B), 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 Alternative Amendment (B), 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 'A. N. Simpson', with a horizontal line underneath.

Nick Simpson
Director of Industry Code Development

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