



Direct Dial: 020-7901-7355

24 February 2003

The National Grid Company, CUSC Signatories and
Other Interested Parties

Your Ref: CAP022
Our Ref: IND/COD/CUSC/CAP022

Dear Colleague,

Amendment to the Connection and Use of System Code ("CUSC") - Decision and Notice in relation to Proposed Amendment CAP022: "Urgent Amendment Proposals - Review Process".

The Gas and Electricity Markets Authority (the "Authority"¹) has carefully considered the issues raised in the Amendment Report² in respect of Proposed Amendment CAP022 "Urgent Amendment Proposals - Review Process".

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

- (i) Proposed Amendment CAP022 be approved with an implementation date of 10 days after the Authority's decision; and
- (ii) Alternative Amendments (A), (D) and (E) be rejected.

The Authority has decided not to direct a modification to the CUSC.

This letter explains the background to Proposed Amendment CAP022, as set out in the Amendment Report, and sets out the Authority's reasons for its decision.

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

² CAP022 Amendment Report dated 4 October 2002.

Background

Proposed Amendment CAP022 was raised by NGC on 18 July 2002 and was submitted for consideration at the CUSC Amendments Panel Meeting on 26 July 2002. Proposed Amendment CAP 021 was raised simultaneously by NGC and sought to amend an identical section of the CUSC. At the meeting the Amendments Panel determined that the Proposed Amendment CAP 022, together with Proposed Amendment CAP 21, should proceed to wider consultation by NGC. As regards proposed amendment CAP 22, a consultation paper was issued on 8 August 2002 with responses invited by 5 September 2002. NGC received a number of Alternative Amendments during wider consultation and, following analysis of these alternatives, determined that a further period of consultation was required. A supplementary consultation paper was issued on 11 September 2002 with responses invited by 25 September 2002. The final Amendment Report was submitted to the Authority on 4 October 2002.

The Proposed Amendment

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 Procedures as set out in Section 8 of the CUSC. One issue considered was what action should be taken following Authority approval of Urgent Amendment Proposals. The timetable for consideration and consultation in respect of an Urgent Amendment Proposal can be of shorter duration than that provided for by the standard CUSC Amendment Process. A consequence of this shortened timetable is that there may not be sufficient time for an Alternative Amendment to be developed by a Working Group (if one has been established) and/or submitted during wider consultation, which might better facilitate achievement of the Applicable CUSC Objectives as compared with the Urgent Amendment Proposal.

Prior to the Authority's approval of Proposed Amendment CAP021, paragraph 8.21.8 of the CUSC required the Amendments Panel to 'initiate the Amendment Procedures' following an amendment being made to the CUSC in respect of an Approved Urgent Amendment. The Panel would do so by submitting an Amendment Proposal to consider whether an Alternative Amendment could better facilitate achievement of the Applicable CUSC Objectives as compared with the Urgent Amendment Proposal. However, in instances where an Approved Urgent Amendment had fully remedied the defect that it was submitted to address, the GSG considered that it would be inefficient for the Amendments Panel to initiate the Amendment Procedures. Further, if the defect had clearly been fully remedied, it was observed that it might not be possible for the Amendments Panel to initiate the Amendment Procedures by submitting an Amendment Proposal because any proposal must comply with paragraph 8.15.2(c) of the CUSC, which requires a description of the issue or defect that the proposal seeks to remedy.

Proposed Amendment CAP021 was raised by NGC on 18 July 2002 to address this issue. Proposed Amendment CAP021 sought to amend paragraph 8.21.8 of the CUSC to allow the Amendments Panel to have the discretion to decide whether or not to initiate the Amendment Procedures following amendment to the CUSC in respect of an Approved Urgent Amendment. Proposed Amendment CAP021 sought to allow the Amendments Panel to consider whether an Approved Urgent Amendment had fully remedied the defect that it was submitted to address

and, should it be determined that the Approved Urgent Amendment had not fully remedied the defect, sought to allow the Amendments Panel to identify a solution (in the form of an Amendment Proposal) to fully remedy the defect.

Proposed Amendment CAP021 was approved by the Authority on 11 October 2002.

Although Approved Amendment CAP021 provided a solution to the problem of what action should be taken following Authority approval of Urgent Amendment Proposals, Proposed Amendment CAP022, (simultaneously submitted by NGC) advanced a different solution to that advanced in Approved Amendment CAP021 to address the problem. Proposed Amendment CAP022 seeks to amend the CUSC (including paragraph 8.21.8, so that, following an amendment being made to the CUSC in respect of an Approved Urgent Amendment, the Amendments Panel must establish a Review of Urgent Amendment Group to determine whether or not an Alternative Amendment could better facilitate achievement of the Applicable CUSC Objectives as compared with the Approved Urgent Amendment.

The Proposer stated that the Proposed Amendment 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.

Alternative Amendment (A)

Alternative Amendment (A) was submitted during wider consultation in respect of Proposed Amendment CAP022. The proposer of Alternative Amendment (A) expressed support for the principle of the Proposed Amendment but considered that the Proposed Amendment would add unnecessary complexity to the CUSC in that it seeks to establish a new entity to conduct reviews of implemented Urgent Amendment Proposals when this role can already be fulfilled by a Standing Group with the appropriate terms of reference. Alternative Amendment (A) seeks to modify the CUSC so that, following an amendment being made to the CUSC in respect of an Approved Urgent Amendment, the Amendments Panel be required to establish a Standing Group to conduct a review of the implemented Approved Urgent Amendments.

The proposer considered that Alternative Amendment (A) compared with the Proposed Amendment represents a more pragmatic, 'fit for purpose' solution and therefore that it would better facilitate achievement of the Applicable CUSC Objective C7F.1(a).

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 CAP022 but was later withdrawn at the request of the Party that submitted it.

Alternative Amendment (C)

Alternative Amendment (C) was submitted during wider consultation in respect of Proposed Amendment CAP022 but was later withdrawn at the request of the Party that submitted it.

Alternative Amendment (D)

Alternative Amendment (D) was submitted during wider consultation in respect of Proposed Amendment CAP022. The proposer of Alternative Amendment (D) expressed support for the principle of the Proposed Amendment but considered that compared with the Proposed Amendment, Alternative Amendment (D) would better facilitate achievement of the Applicable CUSC Objectives.

Alternative Amendment (D) seeks to modify the CUSC so that, following an amendment being made to the CUSC in respect of an Approved Urgent Amendment, the Amendments Panel would have the discretion to decide whether or not to amend the terms of reference of an existing Standing Group or Working Group to allow it to conduct a review of an implemented Urgent Amendment Proposal. In addition, Alternative Amendment (D) seeks to modify the CUSC so that, should the Group's report include a recommendation to the Amendments Panel to the effect that, in the view of the group, there exists an Alternative Amendment that would better facilitate achievement of the Applicable CUSC Objectives, NGC would be required to initiate the Amendment Procedures through the submission of a new Amendment Proposal in the event that no other CUSC Party has done so.

Alternative Amendment (E)

Alternative Amendment (E) was submitted during the further period of consultation in respect of Proposed Amendment CAP022. The proposer of Alternative Amendment (E) expressed support for the principle of the Proposed Amendment but considered that compared with the Proposed Amendment, Alternative Amendment (E) would better facilitate achievement of the Applicable CUSC Objectives.

Alternative Amendment (E) seeks to modify the CUSC so that, following an amendment being made to the CUSC in respect of an Approved Urgent Amendment and the Amendments Panel initiating the Amendment Procedures by submitting a new Amendment Proposal, the Amendments Panel should establish a Working Group to conduct a review of the Approved Urgent Amendment.

Respondents' views

NGC issued a consultation paper on 8 August 2002 inviting responses from CUSC Parties and interested parties.

NGC received seven responses to the consultation in respect of Proposed Amendment CAP022, of which four respondents supported the Proposed Amendment, one respondent expressed support for the principle of the Proposed Amendment but preferred Alternative Amendment (D), one respondent expressed support for the principle of the Proposed Amendment but preferred Alternative Amendments (A) and (E) and one respondent expressed neither support nor opposition to the Proposed Amendment.

One respondent that supported the Proposed Amendment considered that it would set out a clear process for the review of implemented Urgent Amendment Proposals and would therefore better facilitate achievement of the Applicable CUSC Objectives. Another respondent that supported the Proposed Amendment considered that it would be sensible to have a mechanism in place by which to review implemented Urgent Amendment Proposals prior to initiating the Amendment Procedures and therefore that the Proposed Amendment would better facilitate achievement of the Applicable CUSC Objective C7F.1(a).

Both respondents that did not support the Proposed Amendment submitted Alternative Amendments that they considered would better facilitate achievement of the Applicable CUSC Objectives compared with the Proposed Amendment. These Alternative Amendments have been previously described in this letter and are contained in full in the Amendment Report in respect of Proposed Amendment CAP022.

The respondent that expressed neither support nor opposition to the Proposed Amendment commented that the BSC contains no provision for specific Urgent Modification Groups but does provide for a review process of Urgent BSC Modifications and that this review is conducted at the discretion of the BSC Panel.

The respondents' views are summarised and contained in the Amendment Report in respect of Proposed Amendment CAP022.

Amendments Panel Members' views

All of those Amendments Panel Members expressing a view supported Proposed Amendment CAP022.

NGC's recommendation

NGC recommended to the Authority that Proposed Amendment CAP022 should be approved with an implementation date of 10 days after the Authority's decision.

It was NGC's view that, in certain circumstances, following an amendment being made to the CUSC in respect of an Approved Urgent Amendment, the CUSC already provides for the

Amendments Panel to be able to conduct a review of the implemented Approved Urgent Amendment. NGC considered that the CUSC does not preclude the Amendments Panel from identifying and utilizing an existing Working Group or Standing Group (where such a group is considering an associated issue to that the implemented Approved Urgent Amendment was raised to address) to allow it to conduct a review of an implemented Approved Urgent Amendment. NGC considered that this method of review had already been used in relation to Approved Urgent Amendment CAP001, where the Amendments Panel had modified the terms of reference of the Balancing Services Standing Group (which had already been actioned by the Panel as a Working Group to evaluate Proposed Amendment CAP009) to allow it to conduct a review of Approved Urgent Amendment CAP001.

However, it was NGC's view that paragraph 8.17 of the CUSC only allows the Amendments Panel to establish a Working Group in order to assist it in evaluating an Amendment Proposal. Therefore, in instances where there is no established Working Group considering an associated issue to that the implemented Approved Urgent Amendment Proposal was raised to address, it was the view of NGC that the CUSC precludes the Amendments Panel from conducting a review of an implemented Approved Urgent Amendment.

NGC considered that the Proposed Amendment provides a clear route for the review of implemented Urgent Amendment Proposals that could be used when there is no suitable established Working Group or Standing Group. It was therefore the view of NGC that the Proposed Amendment would better facilitate achievement of the Applicable CUSC Objective C7F.1(a).

Ofgem's view

Ofgem considers, having had regard to its statutory duties, that Proposed Amendment CAP022 and its alternatives, Alternative Amendments (A), (D) and (E), as set out in the Amendment Report, would not better facilitate achievement of the Applicable CUSC Objective C7F.1(a).

It is Ofgem's view that Proposed Amendment CAP021 (now approved by the Authority) and Proposed Amendment CAP022 put forward two different solutions to address the same problem. Although the CUSC Amendment Procedures do not prohibit a Party from raising more than one Amendment Proposal to address the same issue, Ofgem considers that, in such instances, it would better facilitate efficient use of the Amendment Procedures for the Party to identify what it believes to be the optimal solution from among those under its consideration and for this to form the basis of a single Amendment Proposal to change the relevant section of the Code. Ofgem considers that this would minimise the instances of unnecessary work being undertaken by NGC.

Authority approval of Proposed Amendment CAP021 changed the CUSC baseline against which Proposed Amendment CAP022 had been submitted and, as a consequence, Ofgem considers that implementation of Proposed Amendment CAP022 would cause the affected section of the Code to read in a nonsensical way. It is Ofgem's view that identical problems of implementation arise when considering amending the CUSC in respect of Alternative Amendments (A), (D) and (E) which were based on the Proposed Amendment and therefore that

Proposed Amendment CAP022 and Alternative Amendments (A), (D) and (E) would not better facilitate achievement of the Applicable CUSC Objective C7F.1(a). It is Ofgem's view that NGC recognised this as a possible danger and as a result NGC submitted alternative legal text to address the eventuality of Proposed Amendment CAP021 being approved in advance of the Authority making a decision on Proposed Amendment CAP022 and its Alternative Amendments.

In general Ofgem would not expect to receive a Proposed Amendment to the CUSC the approval of which is itself contingent upon approval of another Proposed Amendment to the CUSC. In these circumstances, Ofgem considers that NGC would have been constrained to make a provisional rather than an unqualified recommendation and as such Ofgem considers that this may serve to undermine the integrity of the CUSC governance process and therefore would not better facilitate achievement of the Applicable CUSC Objective C7F.1(a). Ofgem considers that as a general rule amendment proposals should address an existing Code baseline with the intent to make an unqualified modification, deletion or addition to the existing baseline.

It is therefore Ofgem's view that the Proposed Amendment and Alternative Amendments (A), (D) and (E) would not better facilitate achievement of the Applicable CUSC Objectives.

On the substantive issues raised by the amendment proposals, Ofgem does not consider it necessary to create a new entity for determining whether Approved Urgent Amendments fully remedy the defects that they are submitted to address. It is Ofgem's view that the CUSC already provides for the Amendments Panel to establish a Standing Group to consider and report on issues specified by the Panel relating to the connection and use of system arrangements in England & Wales. Ofgem considers that determining whether or not an Approved Urgent Amendment fully remedies the defect it was submitted to address can be considered to be such an issue and therefore within the role and remit of a Standing Group with the appropriate terms of reference.

Ofgem does not consider it appropriate to allow Working Groups to be utilised for the purpose of determining whether or not Approved Urgent Amendments fully remedy the defects that they are submitted to address since the Amendments Panel can only establish a Working Group to assist it in evaluating an Amendment Proposal. Following Authority approval of a Proposed Amendment, it may be unclear to the Amendments Panel whether or not the Approved Urgent Amendment has fully remedied the defect it was submitted to address (this is, in fact, the rationale behind the submission of the Proposed Amendment) and therefore the Amendments Panel would not be able to submit an Amendment Proposal which would in turn allow it to establish a Working Group.

The Authority's decision

The Authority has therefore decided not to direct that Proposed Amendment CAP022 or Alternative Amendments (A), (D) or (E), as set out in the Amendment Report, should be made and implemented.

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, Industry Codes

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