


<b>Stage 05: Draft Final Modification Report</b>	At what stage is this document in the process?
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# CMP285: ‘CUSC Governance Reform – Levelling the Playing Field’

01	Initial Written Assessment
02	Workgroup Consultation
03	Workgroup Report
04	Code Administrator Consultation
05	Draft Final Modification report
06	Final CUSC Modification Report


**Purpose of Modification:** CMP285 seeks to reform the CUSC governance to enhance the independence and diversity of panel members and ensure wider engagement from CUSC signatories.


This Draft Final Modification Report has been prepared in accordance with the terms of the CUSC. An electronic version of this document and all other CMP285 related documentation can be found on the National Grid ESO website via the following link: <https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/cusc-governance-reform-leveling-playing>

 On 17 April 2019, the Authority sent-back CMP285. The Authority determined that an opinion cannot be formed based on the Final Modification Report submitted. Following the send-back, a response letter which addresses the points in the send-back letter has been prepared which can be found within Annex 15 of this report.

The purpose of this document is to assist the CUSC Panel in making its recommendation on whether to implement CMP285.

**Published on: 14 May 2019**

 **High Impact:**  
All CUSC signatories will be impacted on an enduring basis.

 **The Workgroup concludes:**  
The Workgroup believe the Terms of Reference have been fulfilled and CMP285 has been fully considered.

The Workgroup met on 19 November 2018 to vote on whether the Original Proposal or any of the six WACMs better facilitated the Applicable CUSC Objectives than the baseline; and what option was best overall. WACM1 and WACM6 both received two votes and the Workgroup concluded that they were the best options. WACM2, WACM3 and the Baseline all received one vote.

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<b>Code Administrators recommends the following revised timetable:</b>		
Workgroup Meetings	Sep 2017 – July 2018	

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Workgroup Consultation issued to the Industry	10 August 2018	
Workgroup meeting to discuss WG Consultation responses	11 September – 19 November 2018	
Workgroup Report Issued to CUSC Panel	22 November 2018	
Code Administration Consultation (19 WD)	14 December 2018	
Second Code Administration Consultation (5 WD)	7 February 2019	
Draft FMR published (5 WD)	15 February 2019	
Draft FMR presented to CUSC Panel	15 February 2019	
CUSC Panel recommendation vote	25 February 2019	
Final Modification Report issued to the Authority	11 March 2019	
Indicative Decision for the Authority	15 April 2019	
Resubmission to the Authority following send back	21 May 2019	
Indicative Decision for the Authority	19 June 2019	
Implementation into the CUSC	20 June 2019	

## 1 About this document

This document is the Draft Final Modification Report document that contains the discussion of the Workgroup which formed in September 2017 to assess the proposal, the responses to the Workgroup Consultation which closed on 10 September 2018, the voting of the Workgroup held on 19 November 2018. The Panel reviewed the Workgroup Report at their CUSC Panel meeting on 30 November 2018 and agreed that the Workgroup had met its Terms of Reference and that the Workgroup could be discharged.

This document also contains the responses received from the Code Administrator Consultation which closed on 16 January 2019. Following review of the responses by Panel, there were some amendments to the legal text which has resulted in the report being issued for a second Code Administrator Consultation which closed on 14 February 2019. The responses to the second consultation can be found in Annex 12 of this report.

CMP285 was proposed by UK Power Reserve and was submitted to the CUSC Modifications Panel for its consideration on 28 July 2017. The Panel decided to send the Proposal to a Workgroup to be developed and assessed against the CUSC Applicable Objectives.

CMP285 aims to reform the CUSC governance to enhance the independence and diversity of panel members and ensure wider engagement from CUSC signatories. The Workgroup consulted on this Modification and a total of 12 responses were received. These responses can be viewed in Annex 7 of this report.

### **Workgroup Conclusions**

At the final Workgroup meeting, Workgroup members voted on the Original Proposal and six WACMs. WACM1 and WACM6 both received two votes and the Workgroup concluded that they were the best options. WACM2, WACM3 and the Baseline all received one vote.

This Code Administrator Consultation has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid website <https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/cusc-governance-reform-leveling-playing>, along with the CUSC Modification Proposal form.

### **Code Administrator Consultation Responses**

Eight responses were received to the Code Administrator Consultation (CAC). A summary of the responses can be found in Section 12 of this document. The responses were very varied with the assessment against the CUSC Objectives as follows:

- 2 responses agreed that CMP285 better facilitated the applicable CUSC Objectives
- 5 responses agreed that WACM1 better facilitated the applicable CUSC Objectives, with 1 preference vote for WACM1
- 3 responses agreed that WACM2 better facilitated the applicable CUSC Objectives, with 2 preference votes for WACM2
- 1 responses agreed that WACM3 better facilitated the applicable CUSC Objectives
- 5 responses agreed that WACM6 better facilitated the applicable CUSC Objectives, with 2 preference votes for WACM6
- There was no support for WACMs 4 or 5

### **Second Code Administrator Consultation**

Additional comments requesting further clarity on the legal text were received during the initial Code Administrator Consultation. This resulted in the CUSC Panel requesting review of the legal text by the Workgroup and several amendments being made to the legal text to provide clarity. This review was instructed under Section 8 of the CUSC (8.23.4) The Panel also concluded that due to the legal text being amended a second Code Administrator Consultation should be administered for five working days.

Two responses were received to the second Code Administrator Consultation. A summary of the responses can be found in section 13 of this document. Of the two responses one had a preference for WACM 5 and the other respondent did not specify. The respondents did not comment on the revised legal text within their responses.

This Draft Final Modification Report has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid ESO website: <https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/cusc-governance-reform-leveling-playing>

### **Send Back**

Following the send back on 17 April 2019, the Code Administrator has been working with the Proposer, National Grid ESO representative and CMP285 Workgroup to address the points raised in the send back letter. As a result, a response letter has been produced and can be found within Annex 15 of this report which provides the Authority with clarification of the deficiencies in the report. No additional amendments have been made to the report and no amendments have been made to the legal text.

## 2 Original Proposal

### Defect

The current CUSC panel composition and voting process to select panel members is not able to deliver a sufficiently diverse and independent panel. It is failing to represent the industry as a whole and, consequently, to guarantee the best outcomes for consumers.

### What

Currently, some large industry players are able to exercise overwhelming dominance when voting for CUSC panel members. Through registering a large number of subsidiary enterprises as CUSC signatories, some ultimate parent companies have been able to secure a significant number of votes in the CUSC panel election (one CUSC signatory can cast one vote).

This has led to some large industry players securing overwhelming and insurmountable dominance during the CUSC panel voting process and has allowed them to repeatedly place a candidate from their company on the panel. In many cases it is difficult to determine how many votes an ultimate parent company has under its control given the limited information that is provided on the CUSC signatory register.

Although panel members are elected by the CUSC signatories, which are subject to the code, this does not necessarily mean they are representative. The reason is twofold:

- substantially different resources within companies can lead to incumbency domination; and
- most smaller companies are not exercising their right to vote for panel members. This is adding to the voting distortion in favour of those many CUSC signatories under their control.

Therefore, the voting system is not functioning correctly, is not transparent and is granting larger companies unfair influence and control over the selection of CUSC members.

### Why

It is crucial that the CUSC panel voting process is transparent, fair and representative of the views of the wider industry. These changes will ensure that the CUSC panel is - and is perceived to be – composed of truly independent industry experts seeking to work for the interests of consumers.

Without reform, the functioning of the CUSC panel will remain opaque and risks being less independent, less representative of the diverse energy industry and less able to deliver the best outcome for consumers.

Furthermore, a lack of reform will reduce consumer perception of the independence of the panel which in itself could bring the industry into disrepute.

## How

A raft of changes should be made to the CUSC panel election process to enhance CUSC panel members' independence and encourage greater diversity in industry background and experience amongst panel members.

The voting process should be made transparent so it is clear how many votes each ultimate parent company has under its control. The number of votes of ultimate parent companies should be limited to increase fairness.

Measures should be taken to increase the participation of all CUSC signatories in the voting process, particularly from smaller companies.

## Detail on why change

It is crucial that the CUSC panel voting process is transparent, fair and representative of the views of the wider industry. These changes will ensure that the CUSC panel is - and is perceived to be – composed of truly independent industry experts seeking to work for the interests of consumers.

## Voting Data

Following a Freedom of Information request to Ofgem, UKPR obtained the following information on the last two CUSC panel votes:

- in 2015 a total of 104 first preference votes were cast.
- in 2013 no votes were cast as votes are only cast when the number of nominees exceeds the number of CUSC panel seats and this did not occur in 2013.

This demonstrates that the total number of votes cast represents only around 20% of all CUSC signatories eligible to vote. The working group should discuss how CUSC signatories can be incentivised to use their votes and to put forward panel members for election.

In addition, UKPR has conducted a review of the public list of CUSC signatories which indicates that some parent companies have registered a significant number of subsidiary companies that they control.

Since each CUSC signatory has one vote in the CUSC panel election, this means that some parent companies have an undue influence over the CUSC panel voting process relative to the rest of the industry. Given the limited information provided on the public CUSC register it is sometimes difficult to ascertain whether a company is a subsidiary of an ultimate parent company.

However, initial UKPR analysis of the public CUSC register suggests that some large industry players have a significant share of the votes. Furthermore, the influence of these votes is much greater when the limited voter turnout is taken into account.

This may explain why the members of the current CUSC panel reflect the majority of the companies listed in the table below. However, we cannot be certain on this point as CUSC signatories voting choices are confidential.

	Centrica	SP	SSE	EDF	RWE /NPower	E.On / Uniper	Total CUSC panel
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							<b>election votes</b>
<b>Number of CUSC signatories eligible to vote for CUSC panel</b>	15	11	22	18	25	12 *	<b>103</b>

\* Note that at the CUSC Panel the independent member from Uniper clarified that Uniper has 2 votes and that now that separation from E.ON has taken place and that the number of CUSC Signatories eligible to vote would not be 12 but 2.

UKPR analysis suggests that the 2017 number of CUSC signatories under the control large incumbent companies amounts to 103. Assuming all these large companies cast all their votes in the 2015 CUSC election, it is would be evident that the incumbents dominated the 2015 election process as only 104 votes were cast<sup>1</sup>.

A similarly low CUSC voter turnout in the 2017 elections would mean these large companies would again dominate the election process if they used all their votes.

The table below shows the composition of the elected members of the CUSC panel since 2007.

	Year					
	2007-2009	2009-2011	2011-2013	2013-2015	2015-2017	2017-2019
	Garth Graham	Garth Graham	Garth Graham	Garth Graham	Garth Graham	
	Paul Jones	Paul Jones	Paul Jones	Paul Jones	Paul Jones	
	Simon Lord	Simon Lord	Simon Lord	Simon Lord	Simon Lord	
	Malcolm Taylor	Paul Mott	Paul Mott	Paul Mott	Paul Mott	
	Bob Brown	Bob Brown	Bob Brown	Bob Brown	Kyle Martin	
	Simon Goldring	Barbara Vest	Barbara Vest	James Anderson	James Anderson	
	Tony Diccio	Tony Diccio	Fiona Navesey	Michael Dodd	Michael Dodd	

Five out of seven Users Panel Members have been in office for between 8 and 10 years.

UKPR recognises that its initial analysis may be inaccurate given the opaque nature of the ultimate ownership of many CUSC signatories. The analysis could be an

<sup>1</sup> The 2015 total number of CUSC signatories eligible to vote for the CUSC panel was 486  
<file:///ukprfs01/FolderRedirection/Alessandra.DeZottis/Downloads/Copy%20of%20CUSC%20Schedule%2001%20-%202020%20June%202015.pdf>



underestimate or overestimate of CUSC signatories under the control of large incumbent companies. Therefore, the above data serves as an example only, and the working group should fully investigate the facts around ultimate control of all CUSC signatories as part of its work.

### **Reform Needed**

It is unacceptable for any part of the industry to have a greater ability to select these independent members relative to other industry parties. Failure to reform the CUSC governance process could lead to reduced panel independence, particularly if some parties can use their large number of CUSC signatory subordinate companies to repeatedly secure a CUSC place for one of their employees.

Without reform, smaller companies will not be able to have any meaningful influence over the CUSC panel selection process and this has perhaps led to the low turn-out amongst smaller players in the CUSC panel elections. This is affecting the credibility of the CUSC panel voting results with only around 20% of signatories choosing to vote.

This is particularly true of recently created smaller companies who are bringing new technologies to the market. The current CUSC panel voting process does not ensure that the panel includes an expert on these new technologies, many of which are and will be placed on the distribution system. Without reform, the CUSC panel risks being less independent, less representative of the diverse energy industry and less able to deliver the best outcome for consumers.

Furthermore, a lack of reform will reduce consumer perception of the independence of the panel which in itself could bring the industry into disrepute.

## **3 Proposer's solution**

**Proposed new CUSC panel voting rules to be implemented to increase independence, diversity and transparency:**

### **Increased Transparency**

- Ultimate parent companies must declare all CUSC signatories under their direct or indirect control. The names of all CUSC signatories under each parent company's control must be clearly declared and published as part of the public CUSC signatory list.
- The number of votes that an ultimate parent company can cast is limited to five.
- A public database must be maintained on the CUSC website of previous panel elections and results.

### **Increasing CUSC Signatory participation**

- The percentage of CUSC signatory votes required in order to make a CUSC panel vote valid is 60%.

### **Independence and Diversity of panel members**

- Panel members cannot have consecutive terms on the CUSC panel. This would be introduced immediately and retrospectively to prevent current members rolling over for another two years following this modification.

- At least three of the CUSC members must be independent and not in the employ of any CUSC signatory or any ultimate parent company of a CUSC signatory while they serve on the panel. These independent panel members will be remunerated for their time directly from the CUSC process.
- At least two positions on the panel must be reserved for a representative with deep experience and knowledge of working in a distributed generation company.
- Alternate CUSC panel members must fill any seat vacated by a full CUSC panel member. Alternate CUSC members are no longer required to be asked to stand in for vacant CUSC members; this will occur automatically. If there are more alternate members than the number of vacant CUSC seats at any given CUSC meeting, a random process will determine which independent alternate CUSC member will fill the vacant position.

### **Independent review of Governance**

- The working group should consider whether it is appropriate to commission a full independent review of the governance of the CUSC panel.

There may be lessons to be learned from the governance of other industry codes, such as the Balancing Settlement Code (BSC), which already has independent members.

The BSC Panel is made up of:

- a Chairman (appointed by the Authority, via Ofgem)
- industry members (elected by Parties)
- a Transmission Company member (appointed by NGC)
- consumer members (appointed by the relevant consumer body)
- no more than two independent members (appointed by the Chairman)<sup>2</sup>

The BSC Panel began work to review its own governance in November 2014, following the Board and BSC Panel jointly commissioning Bill Knight to carry out an independent review of ELEXON's governance. The CUSC panel should consider what lessons can be learnt from the BSC governance review and also whether a similar detailed independent review should be carried out for the CUSC panel.

### **Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?**

This modification will not impact an SCR or other significant industry change projects.

### **Consumer Impacts**

Reform of the CUSC panel will enhance the independence, diversity and transparency of the CUSC panel voting process and of the CUSC decision making process itself. This will ensure that the CUSC panel makes independent decisions in the best interest of

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<sup>2</sup> For instance: the two independent members of the BSC are: Derek W. Bunn, Professor of Decision Sciences at London Business School; and Dr Phil Hare, Director at Pöyry Management Consulting.

consumers. Consumers will have an enhanced perception that the CUSC process is free and fair.

## 4 Alternative Solution

The Proposer as part of Workgroup deliberations has subsequently amended or removed aspects of the above proposed solution. These changes are captured in section 6 of this report.

## 5 Workgroup Discussions

The Workgroup convened seven times between September 2017 and November 2018 to discuss the perceived issue, detail the scope of the proposed defect, devise potential solutions, assess the proposal in terms of the Applicable CUSC Objectives and review the responses to the Workgroup Consultation.

The Proposer presented the defect that they had identified in the CMP285 Proposal and through discussions at the Workgroup meetings, has amended the original proposed solution to either remove an aspect or tweak it. These changes are detailed below.

The Workgroup explored a number of aspects in its meetings to understand the implications of the proposed defect and potential solutions and what the attributes of the solution could be. The discussions and views of the Workgroup are outlined below.

### 1. Confirmation of the attributes of the CMP285 Proposal

The Proposer (following discussions at the Workgroups) confirmed that the scope of the Proposal would be as follows. Please note that later sections confirm the changes from the Proposal originally raised and presented to the CUSC Panel and what has now been included as the revised Proposal as follows.

#### Increased Transparency

- Grouping CUSC signatories under each parent company and limiting the maximum number of votes that a parent company can cast to four.
- Publish more detail to industry on the outcome of CUSC Panel Elections.

#### Independence and Diversity of Panel Members

- Under CMP285 a four-year consecutive term limit would be introduced so a Panel Member could only stand for two consecutive terms.
- Five user elected Panel Members and two appointed independent Panel Members.
- Process to consider if post the outcome of the CUSC Panel Elections there is any knowledge gaps amongst the five elected Panel Members.

#### a) Should CUSC Signatories be grouped together

It was the view of the Proposer that for the purposes of the CUSC Panel Election process CMP285 would group the ultimate parent company with all subsidiaries i.e. first, second, third tier subsidiaries, etc. The subsidiaries would be defined as any company in which

the parent holds a majority stake (i.e. 51%+ of shareholding) in any 'first tier' subsidiary and then any company in which the 'first tier subsidiary' owns a majority stake (i.e. 'a second tier' subsidiary) and so on until the entire structure of companies under the majority control of the ultimate parent company are grouped together as one CUSC 'parent company group' (referred to in the legal text as a Voting Group). For the avoidance of doubt the proposer made it clear that Joint Ventures (JVs) where no single company is a majority shareholder (i.e. no parent company owns more than 50% of the company) should not be incorporated into a Voting Group. JVs with no majority shareholder should be treated as separate CUSC signatories, able to vote independently of their non-majority parent company owners. Some of the Workgroup agreed with the Proposer's view whilst others noted that their preference was to remain as is e.g. one vote per CUSC Party. There was also some debate on the best way to define a Voting Group, including whether (although agreed not at this stage) Aggregators and other future developments could be proactively addressed.

It was noted that the BSC arrangements consider a Trading Party and each of its Affiliates to be a single 'trading party group' for the purposes of Panel Elections. Only one Trading Party in that trading party group can then vote<sup>3</sup>, and they can exercise two votes (i.e. one per Energy Account (production and consumption)). This is the same number of votes held by a Trading Party without any Affiliates, and therefore gives a level playing field between large and small Parties in the election process<sup>4</sup>. Under the CUSC it currently states that each subsidiary (i.e. each separate CUSC Party) is allocated an individual vote, which potentially gives some parent signatories a disproportionate cumulative influence over the outcome of the panel election voting process. The Proposer and some Workgroup Members considered it appropriate to have consistency across BSC and the CUSC (noting that BSC uses the concept of Affiliates, which is slightly broader than subsidiaries focused on for CUSC; however, some Workgroup Members considered that the role and responsibilities of the two Panels were different in scope and that therefore there wasn't the need for consistency).

Please note that draft amendments to Section 8A.3 within the draft legal text detail these elements of the revised CMP285 Proposal.

**b) Should Party Types be defined and elected under that Party Role e.g. Supplier or Generator?**

The Proposer's view was that CMP285 would not look to introduce any arrangements to elect on a constitutional basis for the Panel Elections e.g. there would not be a Supplier Party type to be elected on behalf of Suppliers, or a Generator Party type to be elected

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<sup>3</sup> This can be, but does not have to be, the parent Party.

<sup>4</sup> See BSC Annex B2, Section 3. The BSC defines an Affiliate as meaning 'in relation to any Party, any holding company of that Party, any subsidiary of that Party or any subsidiary of a holding company of that Party, in each case within the meaning of section 1159 of the Companies Act 2006, but subject to Section X2.2.7 in relation to the Transmission Company [which says that BSCCo and any BSCCo Subsidiaries shall not be deemed to be an Affiliate of the Transmission Company]'.

on behalf of Generators, etc. The Work Group agreed and there are no current plans for the Work Group to further explore a constitutionally elected Panel.

**c) What is the maximum number of votes that a Parent company could be cast?**

The Proposer had originally proposed that the maximum number of votes to be cast by a parent company group would be five for each parent company i.e. including all subsidiaries. Following Workgroup discussions, the Proposer has amended their proposal so that now the number of votes should be limited to the number of distinct roles (i.e. the role for which each separate CUSC signatory is registered) attributed to CUSC signatories under each parent company. The four suggested roles are as follows:

1. Generation;
2. Interconnection;
3. Supply; and
4. Demand

It was the view of the Proposer that this would partly align with the BSC approach to limit votes to BSC roles to prevent any Party from dominating the voting simply because they have many subsidiaries acceded to CUSC. An example of this would be for a parent company that has a portfolio of ten subsidiary CUSC signatories spanning Supply, Generation and Demand there would then be a maximum of three votes to cast rather than ten votes. It was clarified to the Workgroup that the BSC limits the votes to Trading Parties, and then to trading party groups, but doesn't limit further by role. Under the BSC each BSC Trading Party (or trading party group) currently gets two votes i.e. one per Energy Account. All Parties have two Energy Accounts, regardless of whether they're a Generator or Supplier (or both) so the number of votes isn't a consequence of the number of roles. A trading party group could, in theory, comprise 20 Trading Parties who collectively fulfil every single possible BSC role - however, that trading party group would still only get two votes i.e. the same as a small, non-integrated, Party.

Please note that draft amendments to Section 8A.3 within the draft legal text detail these elements of the revised CMP285 Proposal.

**d) Should the outcome of the Panel Election vote be published?**

It was the view of the Proposer that CMP285 would place a requirement on National Grid (as the Code Administrator) to publish the outcomes of the Panel Election votes to improve transparency, noting that this publication would not include who had voted but only the outcome of the vote (and number of votes for each candidate). The Proposer noted that currently the voting information is only shared directly with Ofgem. It was the view of the Workgroup that this would look to align CMP285 with the process for publication of voting that is used under the BSC Panel Elections<sup>5</sup> and so the Workgroup agreed with this element of the Proposal.

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<sup>5</sup> BSC Annex B-2, Sections 1.2 and 1.3 require BSCCo to publish various election information including: the election results, the number of valid voting papers received and the number of votes received by candidates in each voting round.

Please note that draft amendments to Paragraph 8A.3.6.2 within the draft legal text detail these elements of the revised CMP285 Proposal.

**e) Should a Dormant Party be eligible to vote in a CUSC Panel Election?**

The Proposer believed that Dormant CUSC Parties<sup>6</sup> should not be entitled to a vote (noting that they are also not presently entitled) and that the process for expelling any Dormant CUSC Parties from the CUSC signatory list should be streamlined. The Workgroup agreed with the Proposer's view, but noting that a review of this process was out of the scope CMP285. The Workgroup discussed this and felt that changes were effectively out-of-scope and the process for an active Party becoming a Dormant party is sufficiently clear in the context of this Modification i.e. a Dormant Party is unable to vote in the election process.

**f) Alternative Panel Members – who should determine which alternate is used should an elected Panel Member not be available for a CUSC Panel meeting?**

The Workgroup discussed who should determine which alternate Panel Member should be called on to sit on the Panel in the scenario that an elected Panel Member was unable to attend a CUSC Panel meeting. The view of the Proposer originally was for the Chair to provide a rationale for choosing a particular Alternate member. If there is no "expertise differential" between Alternate members, the Proposer's view was that the Chair should choose the Alternate member who has not served on the CUSC for the longest period. It was also discussed as to what would happen if the Chair did not appoint an Alternative and the view of the Proposer was that a rota based system would be used. Following Workgroup discussions, the Proposer amended their solution so that Panel Alternates would follow a rotational approach. This is currently how the CUSC Panel operates when an elected Panel member is unable to attend.

Workgroup members were supportive of the rotational approach. However, it was noted that if this approach was taken the Alternates might only get the chance to act as an Alternate once a year and they should be able attend a certain amount of meetings. The Workgroup members were supportive of the idea that alternates are to remain engaged throughout the Panel.

The Workgroup discussed how the Alternate Panel Members should remain engaged in the Panel so that they actively contribute when required.

The Workgroup also discussed what would happen should there not be enough alternate Panel Members to fill the gaps left by full Panel Members. It was the view of the Proposer that any Panel decisions could still take place as long as 50% of CUSC Panel Member places are filled.

A Workgroup member noted that the BSC has each Panel Member having an alternate and it is beholden on them to brief the alternate if they were unable to attend.

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<sup>6</sup> Dormant CUSC Party are defined in Section 11 of the CUSC as being a CUSC Party which does not enjoy any ongoing rights and/or obligations for the period of its dormancy under the CUSC, as provided for in Section 5

Please note that draft amendments to Paragraph 8.7 within the draft legal text detail these elements of the revised CMP285 Proposal.

**g) Extending the notice period CUSC Panel Members must give to Code Administration in respect of notice of absence**

The Proposer also considered that CMP285 should extend the notice period for Panel Members to confirm if they are unable to attend the Panel meeting to allow the Alternate Member sufficient time to prepare for the CUSC Panel meeting. It was the view of the Proposer that CUSC Panel Members should give five Working Days' notice of planned absence from the CUSC Panel to the CUSC Panel Chair and secretariat, so the appropriate Alternate member can be selected and notified (aligned with CUSC schedule 8.8.2b). In case of unplanned absence (i.e. illness) CUSC members should aim to notify the CUSC Chair as soon as possible with at least three hours' notice.

The Workgroup asked what the consequence would be if a Panel Member forgets to inform the Technical Secretary due to the absence being unplanned. A Workgroup member advised this runs the risk that the Panel may not be quorate and that by extending the notice period, this may help mitigate this risk that an alternative can attend the Panel meeting. The Proposer advised he had chosen five Working Days as this timescale is best practice in his view. This would allow enough time to find an Alternate Panel Member and for the Alternate to be able to prepare for the Panel meeting. It is possible that this time period could be reduced to three Working Days' notice to align with the current CUSC requirement that panel member gives at least three Working Days' notice of substantive items to be discussed at the CUSC (CUSC schedule 8.8.6).

A Workgroup member questioned if this would be a requirement or obligation under the CUSC and how this could be reflected in the legal text. It was the view of the Proposer that the legal text would use the concept of reasonable endeavours.

Please note that draft amendments to Paragraph 8.8.12 within the draft legal text detail these elements of the revised CMP285 Proposal.

**h) Length of term for an elected Panel Member**

The Proposer confirmed that CMP285 would still retain the length of term for an elected Panel Member to remain as two years. The Proposer and the Workgroup have aligning views on the length of term for the CUSC Panel.

**i) Limiting how many times an existing Panel Member could stand for Election**

It was the view of the Proposer that under CMP285 a four-year consecutive term limit would be introduced so a Panel Member could only stand for two consecutive terms. The rationale was that limiting the term to two consecutive terms increases the likelihood of securing wider views and backgrounds on the CUSC Panel and building a wider base of industry expertise year by year by developing a wider group of individuals with experience of serving on the CUSC Panel. It was noted by the Proposer that CMP285 would allow for a previous Panel Member to re-stand after one election cycle off the CUSC panel so that the expertise of previously longstanding (i.e. those with two consecutive terms) members will not be lost. There were some concerns raised by Work Group members about placing a limit on consecutive terms. A Work Group member suggested a term limit which corresponds with the provisions detailed in the UK Corporate Governance Code e.g. a maximum term of 10 consecutive years for company boards or the BSC Knight

Report (for BSCCo Board Members)<sup>7</sup>. The Work Group also discussed whether these changes would be retrospective, i.e. would previous and current time served on the CUSC panel contribute to the two-consecutive term limit. The Proposer clarified that the current proposal was for these changes not to be retrospective, meaning that previous time served on the panel before the 2019 elections will not be relevant to the proposed two-consecutive term limit.

A Workgroup member asked what the default arrangement would be if not enough individuals came forward for the Panel Election nominations. They suggested that to ensure continuity and engagement for Panel Election nominations, that half the Panel could be replaced every year. Some Workgroup members did not think this would be a suitable approach as this would mean a Panel Election would take place every year. Workgroup members agreed that this was an inefficient use of industry's time. Whilst other Workgroup Members considered that there was merit in allowing existing Panel Members to continue serving on the CUSC Panel as this created corporate memory. Concerns were also expressed by Workgroup Members on whether there would be enough people from industry to be interested in standing for election for the CUSC Panel.

Please note that draft amendments to Paragraph 8.5 within the draft legal text detail these elements of the revised CMP285 Proposal.

**j) Should Independent Panel Members sit on the CUSC Panel – the independent model**

The Proposer noted his preferred option would be the independent CUSC Panel Member model whereby paid independent members would be selected to fill any perceived knowledge and experience gaps in the CUSC panel membership following the CUSC Panel Election.

The Proposer explained that independent will be defined as any person not currently in the employ or having any material financial interest in a CUSC signatory. However, energy sector experience will still be required so that they will not be completely "independent"<sup>8</sup> from the energy sector. The remuneration rate will be at the discretion of The Company, as per the arrangements of the Chair.

It was the view of the Proposer that all Panel Members should act independently but that CMP285 would introduce a "gateway" after each CUSC Panel Election it would be determined if there are any knowledge gaps amongst the five elected Panel Members (noting that the introduction of two independent members reduces the number of user elected panel members from seven to five – this will result in the total number of Panel Members, panel votes and Alternate Members being unchanged by the proposal.)

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<sup>7</sup>UK Corporate Governance Code (April 2016) can be accessed using the following link:

<https://www.frc.org.uk/getattachment/ca7e94c4-b9a9-49e2-a824-ad76a322873c/UK-Corporate-Governance-Code-April-2016.pdf>

Elxon P324 documentation can be accessed using the following link: <https://www.elxon.co.uk/mod-proposal/p324/>

<sup>8</sup> As may be considered under the BSC definition of independent members.



The Workgroup discussed how independent Panel members should be appointed with the rationale that the person has the relevant expertise. The proposer's view is that National Grid would be responsible for appointing the independent panel members in consultation with the CUSC panel chair, with Ofgem holding a veto. The independent members would be selected to fill any perceived knowledge and experience gaps in the CUSC panel membership following the CUSC Panel Election. However, if this does not secure support then a potential workgroup alternative modification could be for the CUSC Panel Chair and Ofgem to decide who has the relevant expertise needed for the Panel and reserve the extra two positions for individuals who meet these expertise criteria. The panel members for these positions would still need to be elected after satisfying the expertise criteria to enter the ballot and they would be permitted to be in the employ of CUSC parties but without receiving any additional remuneration.

A Workgroup member advised there are current provisions in the CUSC that state that Ofgem can already appoint a further Panel Member if in its opinion there is a class or category of person (whether or not a CUSC Party or a BSC Party) who have interests in respect of the CUSC but whose interests (Section 8.4.3):

- (i) are not reflected in the composition of Panel Members for the time being appointed; but
- (ii) would be so reflected if a particular person was appointed as an additional Panel Member

It was noted by Workgroup Members that they believe that Ofgem has never exercised this right in the past and that the CMP285 Proposal puts in place a "gateway" to ensure appropriate deliberation on independent members is always made following each CUSC Panel Election. Some Workgroup Members considered that the existing wording in Section 8.4.3 was sufficient whilst other Workgroup Members agreed with the Proposer that the CMP285 would mean the active review of the Panel composition.

It was confirmed that Section 8.4.3 would remain to ensure that Ofgem can appoint another Panel Member should it be considered to be a gap in expertise is identified at any point during the performance of CUSC duties and not just at the CUSC Panel Election stage.

Workgroup Members also noted that a concern over using independent Panel Members may be the lack of expertise given the very technical nature of some of the CUSC issues put forward to the CUSC Panel. It was noted that this would need to be considered as part of the appointment process for independent panel members.

Please note that draft amendments to Paragraph 8.3.1, Paragraph 8.4.2 and Paragraph 8.4.3 within the draft legal text detail these elements of the revised CMP285 Proposal.

#### **k) Definition of appointed Independent Panel Member**

The Workgroup discussed how independency could be assessed and what evidence would be required to show independency. Some Workgroup members felt this evidence would not be required; the person would **not** be classed as independent if they had some material financial interest in a CUSC signatory (this would not include pensions accrued from working for CUSC signatories in the past). Material financial interest is defined as any shares, equity or interest valued at an amount greater than £10,000 i.e. the value determined to be significant or material (in certain circumstances) under CUSC. The Proposer advised that under the current proposal, independent means panel members

will not currently be employed by any CUSC signatory but will likely have industry background and knowledge. A Workgroup member queried whether in terms of CUSC signatories this included people being employed by consultants and if so, whether those individuals are allowed to be an independent Panel member or whether they would be classed as an elected Panel member.

Members of the Workgroup queried whether there are any independent members on the BSC Panel. The ELEXON representative noted that under the BSC Panel make up, there are two members who are independent of BSC Parties but are appointed by the Panel Chair.<sup>9</sup> These have historically included individuals who have expertise in policy, economics or governance from academic or (non-energy specific) industry.

The Proposer advised that his intention was for the independent members on the CUSC Panel to have a background in the energy industry in contrast to the BSC use of the term “independent”. The Workgroup discussed how the term independent Panel member needs to be clearly defined so that any person working for a CUSC signatory is not considered independent in this new context rather than the usual CUSC context. Members of the Workgroup suggested that the UK Corporate Governance Code (April 2016)<sup>10</sup> could be a useful tool to help provide a definition of ‘independent’.

The current suggestion is that independent<sup>11</sup> will mean any person not currently in the employ of any CUSC signatory and it will be made clear that this person will likely be required to have energy sector experience and not “independent” from the energy sector (as may be considered for the BSC definition of independent members) and whether there would be a right of appeals process for a CUSC Party to dispute 'independent status' or use of Ofgem and right of veto.

Please note that draft amendments to Paragraph 8.3.1 (as defined within Section 11) within the draft legal text detail these elements of the revised CMP285 Proposal.

### **I) How independent Panel Members are paid and how much**

It was the original view of the Proposer that the two independent CUSC Panel Members who have been selected based on an assessment of the current CUSC Panel make up by the CUSC Panel Chair and Ofgem would be remunerated at a rate reflective of the

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<sup>9</sup> See BSC Section B2.5. The BSC defines independent as meaning that the proposed Panel Member (or any Related Person to them) has not, in the year before the proposed Panel Member’s appointment: (i) been a BSC Party (or a Party to the precursor Pooling and Settlement Agreement); (ii) participated in the transmission, generation, supply or distribution of electricity in the UK; or (iii) been a BSC Agent or Market Index Data Provider. ‘Related Person’ means an immediate family member, a current employer (and any previous employer in the last 12 months), any partner, and any company or Affiliate in which they or an immediate family member control more than 20% of the voting rights in relation to shares. The proposed Panel Member must also, in the Panel Chairman’s opinion, have no other interests which would conflict with their independence as a Panel Member. The BSC requires the Panel Chairman to consult with the Panel on the appointment.

<sup>10</sup> UK Corporate Governance Code (April 2016) can be accessed using the following link: <https://www.frc.org.uk/getattachment/ca7e94c4-b9a9-49e2-a824-ad76a322873c/UK-Corporate-Governance-Code-April-2016.pdf>

<sup>11</sup> This term “Independent” in this context is different to the BSC definition of Independent.

BSC Panel's independent members' remuneration. The ELEXON representative noted that the latest BSC remuneration for independent Panel members was as follows:

- The annual fee for each independent Panel member is £25,000 plus an additional sum of £1,000 per day or £500 per half-day for any meetings additional to the monthly Panel meeting, and £250 for each pre-Panel meeting attended<sup>12</sup>.

The CMP285 Proposer suggested that the independent CUSC Panel members should align with these figures although this position has not been reflected in the legal text and is left to the discretion of The Company. There were mixed views within the workgroup on what the appropriate mechanism and remuneration could be in respect of the appointment of independent CUSC Panel members; the draft legal text has been drafted on the basis of being at the discretion of The Company as per the arrangements of the Chair although some members of the Workgroup felt that there should then be more transparency for both e.g. should their remuneration package be published.

#### **m) Constituency based**

The Proposer's view was that the CMP285 Proposal was based on the independent model and that a 'constituency based model' would not be needed if the independent model was selected because the two independent Panel Members will represent a wider diversity of industry backgrounds as selected by the CUSC Panel Chair and Ofgem. The Proposer noted that they may look to propose an alternative solution that would use a 'constituency model' if the independent Panel Members option is not widely supported. To define the constituency model in this context; the proposer is not suggesting that these two members would "represent" their section of the industry but would remain independent and elected panel members having been drawn from selected constituent backgrounds so that any perceived expertise gap on the CUSC could be filled by these positions. This would ensure diverse background and industry knowledge on the CUSC Panel. These would be elected and un-salaried positions and will serve alongside the five elected 'non-constituency' CUSC members for two years. Further details on this option are detailed later in this section.

#### **n) Number of Panel Members**

It was the view of the Proposer that CMP285 would continue to propose seven CUSC Members and five Alternates with five elected members (of the seven) being voted on to the CUSC Panel every two years by users and a further two independent members being added following the vote to fill any perceived "expertise gaps". The Proposer also confirmed that for the avoidance of doubt that the appointed Citizens Advice, Ofgem and National Grid Panel members will still remain and retain the same voting rights as today under CMP285.

## **2. Attributes of the original CMP285 Proposal that have been removed**

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<sup>12</sup> As published in the annual BSC report, this can be accessed using the following link:

[https://www.elexon.co.uk/wp-content/uploads/2018/06/ELEXON-Limited-Report-and-Financial-Statements-2017\\_18.pdf](https://www.elexon.co.uk/wp-content/uploads/2018/06/ELEXON-Limited-Report-and-Financial-Statements-2017_18.pdf)

In addition to the attributes that have been amended by the Proposer, a number of attributes of the original solution were removed by the Proposer and are no longer included as part of the CMP285 Proposal. These are as follows:

- Requirement for 60% of all eligible CUSC Signatories to have cast a vote for an election to be valid.

The Proposer confirmed that this had been included but that after WG discussion it is now believed that it would not be appropriate to set a minimum % of votes cast for an election to be valid.

- Materially Impacted Parties permissible to vote in CUSC Panel Elections.

The Proposer confirmed that the CMP285 solution had been amended to no longer look to extend the voting rights for CUSC Panel Elections to Materially Impacted Parties. This is because they are not CUSC signatories and the process for deeming a party as a Materially Impacted Parties was with Ofgem and only in respect of raising CUSC Charging Modifications. This was therefore out of scope for CMP285.

### **3. Attributes not considered under the original CMP285 Proposal**

The Proposer and the Workgroup explored whether other attributes which could be considered in relation to allocation of votes in the panel election voting process. These are recorded below, with the rationale for why it was not included.

- Use of **Market Share** in determining the number of votes a CUSC User could cast. This was discounted by the Proposer and the Workgroup as the view was that this would not prevent any party from dominating voting as the largest few companies would still dominate. Some of the Workgroup members believed there should be a capping, however some thought that capping would essentially produce the same outcome as a market share.
- Use of **Transmission Entry Capacity (TEC)** in determining the number of votes a CUSC User could cast. This was discounted by the Proposer and the Workgroup as the view was that this would not prevent any party from dominating voting as the largest few companies would still dominate.
- Use of **Transmission Network Use of System (TNUoS) invoice size** in determining the number of votes a CUSC User could cast. Again, this has similar issues to those listed above.

These were all therefore discounted by the Proposer and the Workgroup as the view was that this would not prevent any party from dominating voting as the largest few companies could still dominate.

### **4. Potential Alternatives solutions**

The Proposer noted that an alternative solution could be based on using a constituency model rather than the proposed independent member model and that this would contain the same attributes as the Original CMP285 Proposal.

Under the constituency model two Panel members would be drawn from selected backgrounds to ensure diverse background and industry knowledge on the CUSC Panel (instead of 2 salaried independent members fulfilling this role). These positions are to be elected and un-salaried positions with the constituency from which they are drawn to be

selected based on knowledge and expertise gaps that need to be filled as recommended by the CUSC Panel Chair and Ofgem.

In this case the two constituency based members will serve alongside the five 'non-constituency' CUSC members for two years. The constituency members will not "represent" the section of the industry from which they are drawn but will be expected to bring their knowledge to the CUSC deliberations which are carried out in the interests of consumers.

This option has not been fully developed and a question on which model industry thinks would be appropriate is included as a CMP285 specific workgroup consultation question.

Although no alternative proposals have been raised at this point in time, areas of debate within the workgroup have indicated there may be potential for alternatives to be raised by workgroup members in future.

#### **5. How does the CMP285 Proposal improve engagement?**

It was the view of the Proposer that the CMP285 Proposal would improve engagement as smaller companies will know that their CUSC Panel votes will count towards a greater percentage of the overall total. Some Workgroup Members, including the proposer considered that should CMP285 be approved and implemented that this would give the potential for greater diversity of backgrounds on the CUSC Panel and that will increase interest, confidence and perceived independence of the Panel. However, a number of Workgroup Members did not agree noting that some aspects of the CMP285 Proposal may actually reduce industry participation such as limiting the number of terms a person may be elected to the CUSC Panel.

#### **6. Will the CMP285 proposal improve the current process?**

It was the view of the Proposer that the CMP285 Proposal sets out a number of initiatives to increase the transparency and fairness of the process to elect CUSC Panel Members by ensuring that some parties do not continue to hold a disproportionate influence over the election of independent Panel Members.

Furthermore, the Proposer considered that the CMP285 Proposal will also aid the selection of Alternate Members based upon the CUSC Panel Chair's assessment of an alternate members ability to contribute to a given modification decision. The proposal also introduces enhancements to the process of the deadline for notifications of absence from CUSC Panel Members.

Whilst some Workgroup Members agreed that the CMP285 Proposed solution may aid transparency in reporting the outcome in more detail for CUSC Panel Elections concerns were raised on whether it would improve the process or provide additional burden on industry.

#### **7. Does the proposal support time constraints for smaller parties?**

The Proposer was of the view that the CMP285 Proposal supports time constraints for smaller parties as it will mean they will have a more equal voice in the CUSC Panel Elections. Additionally, smaller parties will have more confidence that knowledge of their industry (including new technology) will be found within the Panel itself through independent members selected to fill knowledge gaps and through the CUSC Panel Chair's choice of Alternate members.

This view was not universally shared by Workgroup Members with some Workgroup Members voicing concerns on how smaller parties could look to engage or put forward nominations to be elected to the CUSC Panel.

## 8. Code Governance Reform - Consultative Board

Ofgem provided the Workgroup with an update from the workshops on Code Governance Reform<sup>13</sup> and its proposals for establishing a consultative board (etc) to help further aid the Workgroup discussions. The Workgroup were advised that a positive feedback had been given on taking more of an evolutionary approach to code governance and modification proposals.

The Workgroup were advised there were discussions on how the current governance frameworks would work and if the Code Panel governance will be reviewed. It was noted changes are to be tested via the Retail Energy Code. The WG considers there to be minimal direct overlap between CMP285 and Code Governance Reform so CMP285 is able to proceed as planned without prior reference to any future outputs of Code Governance Reform.

## 9. Transitional Arrangements

The Workgroup considered that should CMP285 be approved, the implementation of CMP285 would not require any transitional arrangements.

CMP285 would not be retrospective meaning that all of the changes would come into effect without referring to previous years served on the CUSC by panel members. It should therefore be applicable for the next CUSC Panel Election in 2019 as long as an Authority decision is received no later than April/May 2019.

Below are indicative timelines for the 2019 CUSC Panel Elections:

- Code Administrator will send out invitations to CUSC Users (Schedule 1 of the CUSC) to nominate candidates mid to end **June 2019**.
- The Code Administrator will request return of the nominations forms by end of **July 2019**.
- Code Administrator will then circulate the list of candidates and voting papers or announce the outcome of the Election to CUSC Users early **August 2019**.

## 6 Workgroup Consultation Responses

The CMP285 Workgroup sought the views of CUSC Parties and other interested parties in relation to the issues noted in this document and specifically in response to the questions highlighted in the Workgroup Consultation report.

The CMP285 Workgroup Consultation was issued on 10 August 2018 for 20 working days working days and closed on the 10 September 2018.

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<sup>13</sup> <https://www.ofgem.gov.uk/publications-and-updates/invitation-code-governance-remedies-workshop-q4-2017>

Twelve responses were received to the Workgroup Consultation. These can be found in Annex 7 of the report (along with one additional late response from Innogy Renewables UK Ltd).

A presentation summary of the responses is also located within Annex 8 of the report. The post consultation Workgroup discussions are located in section 8 below.

### **Potential WACMs**

Ten alternatives were put forward by the Proposer after the Workgroup Consultation, these can be found in Annex 9 of this report. During Workgroup discussions on 25 October 2018 the Proposer decided to withdraw alternatives one - five and amend his original solution to reflect alternative five. EDF Energy then proposed a further alternative, these alternatives were discussed and voted on by the Workgroup. This is detailed in section 7 and 8 below. A matrix of the original and final alternatives can be found in Annex 9 and 10 of this report.

## **7 Post Workgroup Consultation Discussions**

The CMP285 Workgroup met on the 25 October 2018 to discuss the twelve responses that were submitted in response to the Workgroup Consultation that closed on the 10 September 2018.

The Chair of the Workgroup talked through a high-level presentation of the responses received which can be located in Annex 8. The Workgroup discussed the responses that did not support the consultation questions in further detail.

The Chair advised the Workgroup that nine of the eleven responses agreed that the original proposal better facilitated the applicable CUSC Objectives. One respondent outlined that the intention of the proposal is supported, however the original would not better facilitate the applicable objectives. Another respondent advised that the Proposer has not provided sufficient evidence that the current CUSC governance is detrimental to competition as the CUSC Panel only has a limited role in the change process.

**Do you believe that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC Panel elections?**

In response to question 6 of the Workgroup Consultation, the majority of respondents agreed that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC Panel elections. One respondent outlined that limiting parties to four votes for each group is not necessary. It makes more sense for each CUSC party to have one vote as they do currently.

**Do you support an independent model i.e. two independent (and salaried) Panel members to join the remaining five user elected Panel members?**

The Chair advised that the majority of respondents supported the independent model. However, three respondents fed back that this model would increase costs and also highlights a risk that appointing two independent Panel members does not provide any

guarantee that the requisite expertise would be available as the content of Modifications over a two- year term can't be known. The Workgroup addressed what was meant by the word 'independent' as some Workgroup members believed this meant that independent Panel members should have no industry background, whereas some thought they could have industry backgrounds but not be working for a CUSC signatory. A Workgroup member advised that the BSC Panel Independent Panel members do have industry background, however they cannot be employed by a BSC signatory for a year before they apply to be a BSC Panel member. A Workgroup member observed that this is also detailed in the proposed legal text for CMP285. The Workgroup further discussed who appoints the Independent Panel members, the Workgroup noted that the Independent Panel members would be appointed by National Grid ESO and the Chair and the Panel would be included in the overall decision making process. The Proposer concluded this discussion by advising he was content with the legal text.

**Do you believe that the independent Panel members should be remunerated for their services and do you believe the proposed remuneration arrangements are appropriate?**

All respondents agree that the independent Panel members should be remunerated for their services and believe the proposed remuneration arrangements detailed within the report are appropriate. It was also suggested that there should be transparency of the amount paid and consistency of remuneration across codes. Some respondents to the consultation suggested that the remuneration arrangements under the BSC should be mirrored. The Workgroup further discussed how the independent Panel members would be remunerated and the costs associated with this. One workgroup member suggested that a benchmark remuneration should be included in the legal text but other workgroup members did not support this proposal. The majority of members accepted that to stipulate remuneration for panel members would fetter the discretion of the ESO in their efforts to fill the post and would automatically set a remuneration level which could otherwise be lower than stipulated.

**Do you agree that the consecutive terms of office of Panel members should be time limited? If so, is the proposed two consecutive term limit (i.e. four years before a Panel member would have to take a one term break before standing for election again) appropriate?**

The Chair advised the Workgroup that majority of respondents did not agree with the proposed consecutive term limit. In their response, Peakgen questioned what would happen in the instance that there may not be enough experts willing to become a Panel member and it's not clear how seats will be filled in those circumstances. EDF energy also felt that by limiting the term of office raises a risk of losing valuable expertise due to the displacement of existing Panellists on a code which has become more complex overtime. However, some industry respondents felt that limiting the term of office was a reasonable and appropriate time limit served on the Panel.

The Workgroup discussed the responses to this question and agreed there is a risk with not having enough people on the Panel. The Workgroup discussed how this risk could be mitigated, a possible option discussed was where people are time barred from becoming Panel members, this is dis-applied in the event there isn't enough interest to safeguard the



Panel to ensure there is enough numbers, although this suggestion has not been adopted. Some Workgroup members then questioned how this would work for Panel alternatives, a Workgroup member suggested that the two-term served wouldn't apply to Panel alternatives. It was agreed that the draft legal texts will make clear that limiting consecutive terms will not apply to alternate members.

**Do you believe there is a need to build greater knowledge and experience of CUSC matters across the industry? If so, does the revised Proposal help to share the knowledge and experience by ensuring a wider range of individuals sit on the Panel over time?**

Most respondents agreed with this view, however the view of some Workgroup members was that they agreed with the first part of the question but not the second part. The view of one Workgroup member was that there is a need to build greater knowledge and experience of CUSC matters, however no to the second part of the question because it is not clear the CUSC membership is the only or best way to increase this. Other workgroup members argued that to build the necessary expertise on the panel it may be necessary to provide a system where less experienced members can sit on the panel and this would build up a wider pool of experienced individuals over time.

**As per the revised Proposal, do you agree with the suggested use of Panel alternates whereby Panel members would no longer be able to select an alternate in their absence and alternates would instead be allocated on the basis of being selected by the chair, or being next of a rota?**

The Workgroup reviewed the responses to this question and agreed with the feedback put forward by industry members. It was also confirmed in the Workgroup that the CUSC Panel now informally use the rota approach - this informal arrangement was put in place after CMP285 was raised as a modification, changing the previous arrangement where members selected their alternates. The Code Administrator is responsible for administering the alternative rota. The Proposer confirmed the use of a rota system for selecting Panel alternates will be included in the draft legal text for the proposal and all WACMs so that this arrangement can be formalised.

**As per the revised Proposal, do you agree with the proposed changes to the nomination and voting process under Section 8A i.e. nominated candidates must provide additional information and parties wishing to vote must confirm their Voting Group to the Code Administrator in advance?**

The Chair talked through the responses received to this question, it was highlighted that respondents had different views. The Workgroup addressed NGET's concern around transparency. The NGET representative advised there was a concern around this part of the process. A Workgroup member suggested that a way to reduce this would be introducing a best endeavours self- declaration form for Parties to complete. After this clarification, the NGET representative advised the Workgroup that he would like to retract the concern from the response. A Workgroup member addressed the process that the BSC follows and how this could be adapted for the CUSC process. The proposer noted that the original proposal was designed to limit the extra work of the Secretariat by requiring Voting Groups to provide

accurate information on the subsidiaries in their Voting Group. However, it was agreed that the language stating that Voting Groups would not receive voting papers if they had not submitted information was to be removed from the proposal and WACMs. However, the Workgroup agreed that it was the responsibility of the Party to advise the Code Administrator of the Party voting group as this is a transparent way for all Parties to ensure they respond. The Proposer agreed to update the proposal and WACMs to make clear that CUSC Voting Groups should provide information on their Voting Group on a best endeavours basis before the CUSC vote. Whatever information is provided by Voting Groups will then be made publicly available with the CUSC secretariat obligated to make reasonable endeavours to ensure accuracy of this information before the CUSC vote and to investigate any reports of incorrect information submitted by other CUSC parties.

**Alternative Solutions** There were eleven alternate solutions raised in total. The Proposer of CMP285 raised ten alternatives, however formally withdrew five of the alternatives following discussions at the workgroup. EDF Energy raised a separate solution.

A summary of the alternatives is detailed below:

Raised By	Alternative	Outcome	Proposal area				
			Grouping Votes	Independent Model	Consecutive Terms	Alternates (pta)	Transparency
UKPR	Alternative 1	Withdrawn					
UKPR	Alternative 2	Withdrawn					
UKPR	Alternative 3	Withdrawn					
UKPR	Alternative 4	Withdrawn					
UKPR	Alternative 5	Becomes Proposal therefore withdrawn					
UKPR	Alternative 6	WACM 1					
UKPR	Alternative 7	WACM 2					
UKPR	Alternative 8	WACM 3					
UKPR	Alternative 9	WACM 4					
UKPR	Alternative 10	WACM 5					
EDF Energy	Alternative 11	WACM 6					

Key:  Not Included       Included

**UKPR Alternate 1:** Alternate 1 seeks to ensure that some parent companies of CUSC parties are no longer able to exercise overwhelming control over cumulative CUSC Panel votes. This is to be achieved by granting parent companies four votes, taking into account

the multiple distinct roles that CUSC parties operate under. Alternate 1 was withdrawn by the proposer prior to the Workgroup vote.

**UKPR Alternate 2:** Alternative 2 would ensure paid independent members would be selected to fill any perceived knowledge and experience gaps in the CUSC panel membership following the CUSC Panel Election. Alternate 2 was withdrawn by the proposer prior to the Workgroup vote.

**UKPR Alternate 3:** Alternative 3 proposes a four-year consecutive term limit would be introduced so a Panel Member could only stand for two consecutive terms. Limiting the term to two consecutive terms increases the likelihood of securing wider views and backgrounds on the CUSC Panel and building a wider base of industry expertise year by year by developing a wider group of individuals with experience of serving on the CUSC Panel. Alternate 3 was withdrawn by the proposer prior to the Workgroup vote.

**UKPR Alternate 4:** Alternative 4 introduces the use of a differing method for selecting alternate Panel Members – rather than allowing the absent Panel member to make the selection – will give a guarantee that impartiality is adhered to and provides additional transparency to the voting process. Alternate 4 was withdrawn by the proposer prior to the Workgroup vote.

**UKPR Alternate 5:** Under this alternative solution the use of a differing method for selecting alternate Panel Members – rather than allowing the absent Panel member to make the selection – will give a guarantee that impartiality is adhered to and provides additional transparency to the voting process. Alternate 5 was withdrawn by the proposer prior to the Workgroup vote and incorporated into the original solution.

**UKPR Alternate 6:** This alternative seeks to reform the CUSC governance – with changes proposed to voting, the selection of alternates and transparency – to enhance the independence and diversity of panel members and ensure wider engagement from CUSC signatories. Alternate 6 received majority support by the Workgroup and became WACM 1.

**UKPR Alternate 7:** Alternative 7 seeks to reform the CUSC governance – with changes proposed to voting, the use of independent members, the selection of alternates and transparency – to enhance the independence and diversity of panel members and ensure wider engagement from CUSC signatories. Alternate 7 was supported by half the Workgroup and Chair, this became WACM 2.

**UKPR Alternate 8:** Alternative 8 seeks to reform the CUSC governance – with changes proposed to the use of independent members, the selection of alternates and transparency – to enhance the independence and diversity of panel members and ensure

wider engagement from CUSC signatories. Alternate 8 was supported by half the Workgroup and Chair, this became WACM 3.

**UKPR Alternate 9:** This alternative seeks to reform the CUSC governance – with changes proposed to the serving of consecutive terms, the use of independent members, the selection of alternates and transparency – to enhance the independence and diversity of panel members and ensure wider engagement from CUSC signatories. Alternate 9 was supported by two Workgroup members and the Chair, this became WACM 4.

**UKPR Alternate 10:** Alternative 10 proposes the use of a differing method for selecting alternate Panel Members – rather than allowing the absent Panel member to make the selection – will give a guarantee that impartiality is adhered to and provides additional transparency to the voting process. Alternate 10 was supported by two Workgroup members and the Chair, this became WACM 5.

**EDF Energy Alternate 11:** Alternative 11 was put forward by EDF Energy in the Workgroup. WACM 11 is exactly same as original proposal as to transparency of voting for panellists, and WACM11 is exactly the same as original proposal as to appointment process for each panel of the alternate where a primary panellist is unable to attend. WACM11 has no other elements of the original, nor any additional elements of its own not in the original. Alternate 11 received majority support by the Workgroup and became WACM6.

Please see Annex 9 for the WACM vote and the final WACM matrix.

## 8 Workgroup Vote

The Workgroup believe the Terms of Reference have been fulfilled and CMP285 has been fully considered.

The Workgroup met on 19 November 2018 to vote on whether the Original Proposal or any of the six WACMs better facilitated the Applicable CUSC Objectives than the baseline; and what option was best overall. WACM1 and WACM6 both received two votes and the Workgroup concluded that they were the best options. WACM2, WACM3 and the Baseline all received one vote. The voting record is detailed below:

### ***Vote 1 – does the original or WACMs facilitate the objectives better than the Baseline?***

Workgroup Member	Better facilitates ACO (a)	Better facilitates ACO (b)	Better facilitates ACO (c)	Better facilitates ACO (d)	Overall (Y/N)
Michael Jenner - UKPR (Proposer)					

Original	Yes	No	No	Yes	Yes
WACM 1	Yes	No	No	Yes	Yes
WACM 2	Yes	No	No	Yes	Yes
WACM 3	Yes	No	No	Yes	Yes
WACM 4	Yes	No	No	Yes	Yes
WACM 5	Yes	No	No	Yes	Yes
WACM 6	Yes	No	No	Yes	Yes

**Voting Statement:**

The original and WACMs contains modifications that increase transparency and fairness of the voting process, enhance the independence of the panel, and seek to build a wider base of individuals with CUSC experience and therefore they are all superior to the baseline.

**Andy Colley - SSE**

Original	Neutral	No	Neutral	No	No
WACM 1	Neutral	Yes	Neutral	Yes	Yes
WACM 2	Neutral	No	Neutral	No	No
WACM 3	Neutral	No	Neutral	No	No
WACM 4	Neutral	No	Neutral	No	No
WACM 5	Neutral	No	Neutral	No	No
WACM 6	Neutral	Yes	Neutral	Neutral	Yes

**Voting Statement:**

The proposal to Group and cap the number of votes that each Corporate entity can exercise is helpful as it will limit any perception that undue power and influence can be brought to bear by larger players with multiple CUSC signatories. This marginally better facilitates ACO (b) and is an improvement against ACO (d).

**Mike Oxenham – National Grid ESO**

Original	No	Neutral	Neutral	No	No
WACM 1	Yes	Neutral	Neutral	Yes	Yes
WACM 2	Yes	Neutral	Neutral	Yes	Yes

WACM 3	Yes	Neutral	Neutral	Yes	Yes
WACM 4	No	Neutral	Neutral	No	No
WACM 5	No	Neutral	Neutral	No	No
WACM 6	Yes	Neutral	Neutral	Yes	Yes

**Voting Statement:**

In our WG Consultation response we stated that ‘we expect that at a minimum this Proposal (as it stands) will further Applicable Standard CUSC Objectives (a) and (d) due the removal of actual and/or perceived barriers in the process and the expected increase in the engagement of both smaller parties and newer entrants in the panel election process and resulting panel composition. This will then provide more diversity in the panel experience (also due to the introduction of independent panel members) and this should therefore lead to more efficient outcomes.’ The ‘risk of not having adequate numbers and/or experience on the Panel in future as a result of the limit on panel member tenure is suitably mitigated’ was a condition of our support which has not been resolved. Therefore on balance we have withdrawn support for the full Proposal and not provided support for those WACMs where there is a consecutive term limit included. The reason being that WG views and the WG Consultation feedback, especially in relation to a limited number of candidates involved in the election process and the Elexon experience of relatively low engagement even with a comparable cap on voting, has highlighted a material risk in respect of a consecutive term limit.

However, we still believe there are merits in all other components of the Proposal and as such we have supported the other WACMS which we believe on balance further the applicable CUSC objectives for the same reasons as stated above.

**Binoy Dharsi – EDF Energy**

Original	Neutral	No	Neutral	No	No
WACM 1	Neutral	Yes	Neutral	Yes	Yes
WACM 2	Neutral	No	Neutral	No	No
WACM 3	Neutral	No	Neutral	No	No
WACM 4	Neutral	No	Neutral	No	No
WACM 5	Neutral	No	Neutral	No	No
WACM 6	Neutral	Yes	Neutral	Yes	Yes

**Voting Statement:**

EDF Energy does not believe that the inclusion of independent panel members necessary. There is already an appropriate mechanism for the regulator to evoke, should it require, further independence to the panel by appointing an additional panellist.

We also believe that precluding consecutive terms of a panel member is not required. It forces a potentially experienced panel member from a post which could ultimately be replaced by someone who is less qualified and with less knowledge. Continuity, through transparent voting would and should choose the most effective candidate for the position.

We are agnostic to Group voting however acknowledge that some organisations do have complex structures that will not always act as under a group structure so could be adversely impacted under this arrangement.

James Anderson – Scottish Power

Original	Neutral	No	Neutral	No	No
WACM 1	Neutral	Yes	Neutral	Yes	Yes
WACM 2	Neutral	No	Neutral	No	No
WACM 3	Neutral	No	Neutral	No	No
WACM 4	Neutral	No	Neutral	No	No
WACM 5	Neutral	No	Neutral	No	No
WACM 6	Neutral	Yes	Neutral	Neutral	Yes

Voting Statement:

Grouping and capping the number of votes from each parent company will improve the perception of fairness and may marginally better facilitate competition (ACO b).

The appointment of two independent (salaried) Panel members increases the cost of administering the CUSC, does not necessarily improve the level of knowledge appropriate to any particular modification and reduces the number of Industry Panel Members. It therefore potentially reduces competition (ACO b) and efficiency (ACO d).

A limit of two terms on Industry Panel Members potentially reduces the pool of talent available to the Panel (recent Panel elections indicate that this could exclude up to one third of interested candidates) and would potentially reduce the efficiency of administering the CUSC (ACO d).

Publishing more detail on the outcome of Panel elections improves transparency and may better facilitate competition. Maintenance of a register of Panel Members' financial interests in the industry will add an additional administrative burden on both the Code Administrator and Panel Members and may some potential Panel members from standing for election. Overall, it is probably detrimental to efficiency (ACO d).

The Original and all Alternates are neutral against ACOs (a) and (c).

Lisa Waters – Waters Wye					
Original	Neutral	Yes	Neutral	Yes	Yes
WACM 1	Neutral	Yes	Neutral	Yes	Yes
WACM 2	Neutral	Yes	Neutral	Yes	Yes
WACM 3	Neutral	Yes	Neutral	Yes	Yes
WACM 4	Neutral	Yes	Neutral	Yes	Yes
WACM 5	Neutral	Yes	Neutral	Yes	Yes
WACM 6	Neutral	Yes	Neutral	Yes	Yes
<p>Voting Statement:</p> <p>All of the proposals have some benefit over the existing governance regime, though I have concerns about specific elements of the different options. Notably, I am concerned that those limiting consecutive terms on the Panel may create governance issues as there may not be enough parties willing to serve. However, were that issue to arise it would be possible to raise another change to unpick the rules.</p>					
Robert Longden – Cornwall Energy					
Original	Neutral	No	Neutral	No	No
WACM 1	Neutral	No	Neutral	No	No
WACM 2	Neutral	No	Neutral	No	No
WACM 3	Neutral	No	Neutral	No	No
WACM 4	Neutral	No	Neutral	No	No
WACM 5	Neutral	No	Neutral	No	No
WACM 6	Neutral	Yes	Neutral	Yes	Yes
<p>Voting Statement:</p> <p>The Proposer has not provided sufficient evidence that the current CUSC governance regime is detrimental to competition, or that the proposed changes would increase efficiency in the administration of the arrangements. It is unclear how any "independents" would improve the CUSC processes and there is no detail of how they would be held accountable for their decisions which affected the liabilities of CUSC parties. Ofgem provide full oversight of all CUSC activities at present, together with an independent Chair. No evidence has been presented that these are either inadequate or unfit for purpose. Artificially restricting the number of terms which can be served by</p>					



Panel members will serve to dilute the available pool of expertise and threaten the benefits of relevant experience. No evidence has been presented that companies under a parent either actively or passively align themselves to a particular position. Given the increasing diversity of companies operating in the sector, with different business models, subsidiaries are highly likely to develop individual positions which reflect their situation.

**Vote 2 – Do the WACMs facilitate the objectives better than the Original?**

Workgroup Member	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Michael Jenner - UKPR (Proposer)					
WACM1	No	No	No	No	No
WACM2	No	No	No	No	No
WACM 3	No	No	No	No	No
WACM 4	No	No	No	No	No
WACM 5	No	No	No	No	No
WACM 6	No	No	No	No	No
Voting Statement: The original contains modifications to group CUSC votes under the parent company and limit them to four, increase transparency, enhance independence, and seek to build a wider base of individuals with CUSC experience and codify the fair use of alternates. Each of these WACMs only contains certain aspects of the full range of modifications contained in the original and therefore they do no better facilitate the objectives than the original.					
Andy Colley - SSE					
WACM1	Neutral	Yes	Neutral	Yes	Yes
WACM2	Neutral	Neutral	Neutral	Neutral	Neutral
WACM 3	Neutral	Neutral	Neutral	Neutral	Neutral
WACM 4	Neutral	Neutral	Neutral	Neutral	Neutral

WACM 5	Neutral	Neutral	Neutral	Neutral	Neutral
WACM 6	Neutral	Yes	Neutral	Neutral	Yes

**Voting Statement:**

Alternatives that exclude the paid “Independent” model and limitation on consecutive term of office are an improvement in comparison to the Original Proposal and better facilitate ACOs (b) and (d).

**Mike Oxenham – National Grid ESO**

WACM1	Yes	Neutral	Neutral	Yes	Yes
WACM2	Yes	Neutral	Neutral	Yes	Yes
WACM 3	Yes	Neutral	Neutral	Yes	Yes
WACM 4	No	Neutral	Neutral	No	No
WACM 5	No	Neutral	Neutral	No	No
WACM 6	Yes	Neutral	Neutral	Yes	Yes

**Voting Statement:**

As above, each WACM without the consecutive term limit component of the Proposal is better than the Original i.e. as the Proposal (including the consecutive term limit) also has all other elements of the proposal included which are viewed to be positive.

**Binoy Dharsi – EDF Energy**

WACM1	Neutral	Yes	Neutral	Yes	Yes
WACM2	Neutral	No	Neutral	No	No
WACM 3	Neutral	No	Neutral	No	No
WACM 4	Neutral	No	Neutral	No	No
WACM 5	Neutral	No	Neutral	No	No
WACM 6	Neutral	Yes	Neutral	Yes	Yes

**Voting Statement:**

EDF Energy does not believe that the inclusion of independent panel members necessary. There is already an appropriate mechanism for the regulator to evoke, should it require, further independence to the panel by appointing an additional panellist.

We also believe that precluding consecutive terms of a panel member is not required. It forces a potentially experienced panel member from a post which could ultimately be

replaced by someone who is less qualified and with less knowledge. Continuity, through transparent voting would and should choose the most effective candidate for the position.

We are agnostic to Group voting however acknowledge that some organisations do have complex structures that will not always act as under a group structure so could be adversely impacted under this arrangement.

James Anderson – Scottish Power

WACM1	Neutral	Yes	Neutral	Yes	Yes
WACM2	Neutral	Neutral	Neutral	Neutral	Neutral
WACM 3	Neutral	Neutral	Neutral	Neutral	Neutral
WACM 4	Neutral	Neutral	Neutral	Neutral	Neutral
WACM 5	Neutral	Neutral	Neutral	Neutral	Neutral
WACM 6	Neutral	Yes	Neutral	Neutral	Yes

Voting Statement:

All Alternatives which contain the Independent Model or Consecutive Terms are equally as unattractive as the Original Proposal in terms of facilitating ACOs (b) and (d). Alternatives that exclude these elements better achieve ACOs (b) and (d).

Lisa Waters - Waters Wye

WACM1	Neutral	Yes	Neutral	Yes	Yes
WACM2	Neutral	Yes	Neutral	Yes	Yes
WACM 3	Neutral	Yes	Neutral	Yes	Yes
WACM 4	Neutral	Yes	Neutral	Yes	Yes
WACM 5	Neutral	Yes	Neutral	Yes	Yes
WACM 6	Neutral	Yes	Neutral	Yes	Yes

Voting Statement:

All of the alternates fine tune the original to the benefit of the parties by addressing the concerns raised by both the group and the consultation respondents.

Robert Longden – Cornwall Energy

WACM1	Neutral	Yes	Neutral	Yes	Yes
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WACM2	Neutral	Neutral	Neutral	Neutral	No
WACM 3	Neutral	Neutral	Neutral	Neutral	No
WACM 4	Neutral	Neutral	Neutral	Neutral	No
WACM 5	Neutral	Neutral	Neutral	Neutral	No
WACM 6	Neutral	Yes	Neutral	Yes	Yes

**Voting Statement:**

Please see previous statement. WACM 6 is better than the original in that it provides a more rounded and transparent process for alternates. If an acceptable method of “grouping” were to be developed, it is possible to see a case for WACM1, as it does not contain the less desirable elements of the original. The original and the rest of the WACMs are worse than the baseline. It may be argued that WACM 6 is better than the baseline, but the selection of alternates is no longer solely a matter for a specific Panel member.

**Vote 3 – Which option is the best?**

Workgroup Member	BEST Option?
Michael Jenner - UKPR (Proposer)	<b>Original proposal</b>
Andy Colley - SSE	<b>WACM1</b>
Mike Oxenham – National Grid ESO	<b>WACM 2</b>
Binoy Dharsi – EDF Energy	<b>WACM 6</b>
James Anderson – Scottish Power	<b>WACM1</b>
Lisa Waters - Waters Wye	<b>WACM 3</b>
Robert Longden – Cornwall Energy	<b>WACM 6</b>

## 9 Relevant Objectives

### Impact of the modification on the Applicable CUSC Objectives (Standard):

Relevant Objective	Identified impact
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Neutral

(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;	Neutral
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	Neutral
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive
*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).	

The implementation of these proposals will enhance the independence, transparency and diversity of the CUSC panel which will in turn enhance the ability of the panel to strive for the best outcomes for consumers.

## 10 Implementation

This modification should be concluded and implemented by 1<sup>st</sup> May 2019 in order for the necessary CUSC governance changes to be made ahead of the 2019 CUSC panel elections. The implementation of these proposals will not entail any costs beyond any incidental expenditure in changes in the CUSC governance documents.

## 11 Code Administrator Consultation Response Summary (1)

The Code Administrator Consultation was issued on 17 December 2018 for 20 Working days, with a closing date of 16 January 2019. Eight responses were received to the Code Administrator Consultation and are detailed in the table below.

Respondent	Do you believe that CMP285 better facilitates the Applicable CUSC Objectives?	Do you support the proposed implementation approach?	Do you have any other comments?
Electricity North West	<p>We do believe that the implementation of CMP285 will better facilitate Applicable CUSC Objectives (b) and (d) and we have a preference for WACM2 as this contains the necessary elements that will aid reform which will ultimately benefit consumers.</p> <p>Change is proposed in the following areas:</p> <ul style="list-style-type: none"> <li>The grouping of votes</li> </ul>	We do support the implementation approach	While we think this change is beneficial it may be that wider reform would be useful and note that BEIS / Ofgem are undertaking a review of energy network codes.

	<ul style="list-style-type: none"> <li>• The introduction of independent panel members</li> <li>• Limit on the number of consecutive terms</li> <li>• Alternates on a rota basis</li> <li>• Improving transparency.</li> </ul> <p>We support these elements apart from the restriction on consecutive terms as we believe there is a benefit from continuity and the expertise built up over multiple terms, particularly as these are elected representatives and part of this proposal is the inclusion of independent members to provide more balance to the panel.</p> <p>The grouping of votes and provision of a rota to cater for alternates attending meetings does seem reasonable and pragmatic.</p> <p>As there is an intention to promote the CUSC and ensure parties feel a sense of inclusion improving the transparency of processes involved will certainly aid that objective.</p>		
<p>Drax Power Limited</p>	<p>Drax support the proposals to:</p> <ul style="list-style-type: none"> <li>• Place parties into a voting group and limit the number of votes.</li> <li>• Improve transparency including the publication of Panel Election results.</li> <li>• Alternate members being selected by a rota system rather than the absent panel member.</li> </ul> <p>We consider that these are the only necessary parts of the proposal required to rectify the defect and don't support any proposals that introduce additional requirements. As such, our preference is for WACM1.</p> <p>Standard Applicable CUSC Objective (d) – Positive (WACM1 and WACM6)</p> <p>Placing parties into a voting group will better facilitate the Standard Applicable CUSC Objectives. A voting system that fairly apportions the number of votes will ensure that members are elected in a way that represents the whole industry. We</p>	<p>Yes, implementing changes in time to take affect for the 2019 CUSC Panel Elections is a sensible approach. We also support the non-retrospective approach whereby all the changes would come into effect without counting previous years members served on the CUSC Panel.</p>	<p>Yes. Whilst we support parties being placed into voting groups, we do not believe that limiting the votes to a maximum of four based on what roles the signatories in the voting group have is the fairest approach. We believe that each voting group should have the same number of votes, in the BSC, every trading party or trading party group gets two votes, one for each account.</p> <p>Whilst this approach makes sense from a BSC perspective, from a CUSC perspective we think that the sensible approach is to limit the number of votes to one for each voting group. This will prevent situations that could be deemed inequitable where, for example, one voting group with 20 signatories that are all generators gets only one vote, whereas a voting group with four signatories, one for each party role gets four votes.</p>

	<p>strongly support grouping CUSC Parties together into a voting group and limiting the number of votes a that a voting group has.</p> <p>This change, along with additional transparency and the introduction of a rota scheme for selection of alternates, will resolve concerns that some companies have an unfair and disproportionate share of the votes. In this sense we believe that CMP285 promotes efficiency in the CUSC arrangements.</p> <p>We do not support the following elements of some of the proposals:</p> <ul style="list-style-type: none"> <li>• Limiting the number of consecutive terms that panel members can serve – this is unnecessary, if parties are placed in voting groups with a limited number of votes, this will ensure that the voting process is fair and representative of industry. If people were to be re-elected for consecutive terms this would reflect the desire of industry, restricting the number of terms panel members can stand for election will only limit the choice of candidates for parties to choose from, this goes against the principles of this modification.</li> <li>• The arrangements to facilitate independent members – we believe that reducing the number of panel members that industry can elect from seven to five goes against the principles of diversity and reduces the choice of nominees that industry can elect. We note Ofgem already has the power to appoint additional Panel Members.</li> </ul> <p>WACM1 and WACM6 doesn't propose the two changes highlighted above and as such both better facilitate the Standard Applicable CUSC Objectives compared to the Original and other WACMs. Our preference is for WACM1 which places parties into voting groups.</p>		
Scottish Power Energy	Although there is no evidence that the current election process is detrimental to competition, grouping	Yes, if approved, CMP285 should be implemented in time to be effective for the	No.

<p>Management Limited</p>	<p>the number of votes from each parent company may improve the perception of fairness and may marginally better facilitate competition (ACO b).</p> <p>The appointment of two independent (Salaried) Panel members increases the cost of administering the CUSC, will not necessarily improve the level of knowledge applicable to all the proposals during a Panel term and reduces the number of industry Panel Members. It potentially reduces competition (ACO b) and efficiency (ACO d).</p> <p>A limit of two terms on Industry Panel Members potentially reduces the pool of talent available to the Panel (recent Panel elections indicate this could exclude up to one third of interested candidates) and would potentially reduce the efficiency of administering the CUSC (ACO d).</p> <p>Publishing more detail on the outcome of Panel elections improves transparency and may better facilitate competition (ACO b). Maintenance of a register of Panel Members' financial interests in the industry would add an additional administrative burden on both the Code Administrator and Panel members and may deter some potential Panel members. Overall it is probably detrimental to efficiency (ACO d).</p> <p>The Original and Alternates are neutral against ACOs (a) and (c).</p> <p>On this basis only WACMs 1 and 6 overall better meet the Applicable CUSC Objectives than the current baseline.</p>	<p>CUSC Panel elections in 2019.</p>	
<p>Citizens Advice</p>	<p>We believe that WACM2 better facilitates Applicable CUSC Objectives:</p> <p>(b) - By providing more access to CUSC parties of a smaller size, this will level the playing field. It will enable CUSC Parties of any size to have a more equal say on the outcome of CUSC matters and therefore this should promote greater competition.</p> <p>(d) - The implementation and administration of CUSC arrangements will be improved by greater participation of a larger number of CUSC Parties. This should improve the diversity of views</p>	<p>We support the proposed implementation approach.</p>	<p>It is important that implementation is achieved in time for the next round of CUSC panel elections in 2019.</p>



	<p>within the CUSC administration process.</p> <p>As per <a href="#">our response</a> to the Workgroup consultation, should the original proposal or any WACM which includes limiting consecutive terms of office for panel members (WACM 4 and 5) be implemented, there is a danger that collective corporate knowledge could be lost if the majority of panel members leave at the same time - which will be the case in 2019 as 5 of the current 7 members would be ineligible to stand for reelection</p> <p>Participating as an active member of the CUSC panel is time consuming and for smaller players this might be a reason not to put themselves forward for election. If the modification fails to generate sufficient additional interest from potential new panel members then there might be a situation where there are not enough people who are nominated for the panel. In this event CUSC does not have a codified method to deal with this situation. We are not satisfied that this scenario has been adequately dealt with and therefore cannot support any proposal which includes limiting terms of office.</p>		
Uniper UK Ltd	<p>The modification introduces some helpful aspects and some which would not be helpful.</p> <p>1. Grouping of votes</p> <p>We do not believe that this better meets the relevant CUSC objectives, namely working against objective d) and the efficiency of the CUSC arrangements.</p> <p>The grouping of votes proposal has come about as result of a perception of the voting system being dominated by a number of parties with significant numbers of votes each. The consultation document shows that in 2015 for instance 6 companies held 103 votes between them. However, this needs to be viewed in</p>	<p>If the proposal is to be implemented then this appears sensible.</p>	<p>Yes, there are a number of potential issues regarding the detail of what is being proposed.</p> <p>1. Grouping votes</p> <p>The legal text in 8A.1.1.6 covers the obligations for parties to report errors in the list of voting groups and requires that Users should use “best endeavours” to do so, whilst National Grid has only to use “reasonable endeavours” to investigate and correct them. Best endeavours is a specific and onerous legal requirement which is disproportionate for these circumstances. It also seems somewhat one sided when</p>

	<p>the context that those votes represented 21% of the possible 486 ballot papers issued that year. Therefore, they could not be seen as holding a dominant share of total votes, either individually or collectively. The present total number of votes has increased to 547. The reality is that very few ballots were cast in that election and this can therefore give the impression that there is dominance. The real challenge is to mobilise those others who did not vote. Additionally, work needs to be done to encourage more parties to put forward candidates to the election, as for several past elections insufficient numbers or nominations were received to require a vote to take place.</p> <p>What this proposal does do is increase the complexity of the voting arrangements, as work has to be carried out to identify voting groups and to allocate up to 4 votes to them, whilst it does not appear to meaningfully increase the ability of other parties to participate in the election process. There are also issues with the legal text proposed to achieve this. We comment on these in the further comments section.</p> <p>2. Independent model</p> <p>We do not believe that this better meets the relevant CUSC objectives, also working against objective d).</p> <p>Presently, all CUSC panel members are required to act independently when carrying out their duties under section 8.3.4 of the CUSC. The proposal to introduce paid independent members would add a significant cost to the process for little if no apparent benefit. Additionally, it is not clear why replacing elected members with unelected ones appointed by National Grid would</p>		<p>National Grid's requirements are less onerous.</p> <p>8A.3.1.3 and 8A.3.1.4 as drafted seems unclear. 8A.3.1.3 is clear that each voting group has a maximum of 4 votes. However, 8A.3.1.4 could be read to imply that each user in the voting group has one vote per category to which it belongs, which is then capped for the voting group at 4 votes.</p> <p>So, for example a voting group could have two parties which are both suppliers and generators, which would each attract 2 voting papers, one for each category. This would mean a total of 4 votes. Alternatively, the requirements could be read to mean that the parties between them would only have one vote per category, so in this instance 2 votes, although this would seem to make the requirement for the 4 vote cap in 8A.3.1.3 redundant. This section should be made more explicit about how this would work.</p> <p>2. Consecutive terms</p> <p>In 8.5.1 there is a limit on consecutive terms for elected Panel Members and unelected Independent Members, but not for any other appointed members. If the purpose of this is to introduce new perspectives and ideas, then the requirements should extend to all voting members.</p> <p>8.5.2 prevents Panel Members who serve two consecutive terms from being eligible for appointment for a period of one term. However, it is not clear</p>
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	<p>improve the election process, as it seems an intrinsically undemocratic move. Furthermore, the legal text for this element of the proposal makes it clear that an unelected member would be appointed if “<i>such person’s interests reflect the interests of a class or category of CUSC Party whose interests are not reflected in the composition of Panel Members</i>” appointed through the elected process. This seems to contradict the principle that Panel Members are not there to reflect their interest or those of their employers, as required by 8.3.4 of the CUSC.</p> <p>3. Consecutive terms</p> <p>We do not believe that this better meets the relevant CUSC objectives, also working against objective d).</p> <p>The proposal to prevent more than two consecutive terms would be sensible if there was evidence that parties were putting forwards candidates for election, but that the election process was preventing them from being elected. However, this does not appear to be the case. In fact, historically parties have tended to put insufficient numbers of candidates forward for election, meaning that voting has not needed to take place. Recently, as more controversial and higher impact modifications have been progressed under the CUSC, interest in the CUSC Panel and the modification process has increased. This is positive and should be encouraged further.</p> <p>However, we are concerned that the consecutive terms provisions in this proposal could actually work against encouraging sufficient candidates to be brought forwards, if some are automatically prevented from doing so in this manner. We also have</p>		<p>whether such a Panel Member could seek appointment as an Alternate Member instead for that term and, if so, the basis on which this would happen.</p> <p>3. Alternates</p> <p>8.7.2 in the legal text details how Alternates would be appointed to act on behalf of an absent Panel Member for a particular meeting. This is on a rota basis, but if there are not enough Alternates to cover the total number of absent regular members, it makes provision for the rota to start again so that an Alternate may hold more than one vote. This second round of the rota should also include regular Panel members too. Otherwise, in a situation with a low number of Alternates, one or more Alternate members could end up holding three or more votes for a meeting whereas the regular Panel members in attendance would be restricted to only one. The present drafting of 8.7.5 a) ii) mentions a situation where an Alternate is also a Panel Member. This can’t happen under the present drafting unless the above change is made.</p> <p>8.7.5 b) i) states that an Alternate member who has been appointed as an alternate for a particular meeting, will cease to be appointed if the Panel Member who they are acting on behalf of ceases to be a Panel Member. This is a clause from when Alternates were appointed by Panel Members themselves and does not make sense in this context. It should be removed.</p>
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	<p>some concerns about the legal text drawn up for this element which we detail in the further comments section.</p> <p>4. Alternates</p> <p>We think this element does better meet the applicable CUSC objectives and better promotes objective d) in particular.</p> <p>This proposal seems sensible as it simply formalises the current working practice. However, there are some issues with the legal text proposed which we detail in the further comment section below.</p> <p>5. Transparency</p> <p>We fully support the proposals to provide greater transparency in the election process, including publishing details of the election results such as the numbers of votes received by individual candidates and the affiliations of panel members and alternates. This should help instil trust in the election process. This should better promote objective d).</p> <p>Based on the above, we believe that WACMs 1 and 6 overall better meet the applicable objectives. We do not believe any of the other proposals better meet the objectives. WACM 6 is the best option.</p>		<p>8A.4.2.1 details arrangements in the event that a Panel Member resigns before the end of their term of service. It outlines that an Alternate would be appointed on the basis of a rota. This would seem to imply that Alternates would take it in turn to cover for the resigned Panel Member until the next election, but it reads as if one Alternate would be chosen to act as the new Panel Member for the whole period. This is backed up by the provisions of 8A.4.2.2 that the Alternate Member chosen to be the new Panel Member will then become a Resigning Alternate Member. How would this rota be drawn up to ensure fair treatment of Alternate Members?</p> <p>It would seem more sensible to use the provisions of 8A.4.3, used for all other circumstances for the removal of a Panel member, instead. This appoints the Alternate Member who had the highest number of votes in the original election.</p> <p>A similar provision is contained in paragraph 8A.4.5.2 in respect of Independent Members. Again, the rota system does not seem to make sense in this context.</p>
<p>UK Power Reserve</p>	<p>UK Power Reserve believes that the original proposal best facilitates the Applicable CUSC Objectives.</p> <p>The proposal sets out a number of initiatives to increase the transparency and fairness of the process to elect CUSC Panel Members. In doing so, it prevents certain parties from holding a disproportionate influence over the election of Panel Members and we envisage will lead to a more diverse and representative panel.</p>	<p>Yes. UKPR considers the proposed implementation approach to be suitable.</p> <p>It is vital that the recommended timeframes outlined in the workgroup report are adhered to in order for the necessary CUSC governance changes to be made ahead of the 2019 CUSC Panel elections.</p>	<p>We note that in the event that the original proposal is not deemed to best facilitate the objectives, UKPR has a preference amongst the various workgroup alternatives – WACM 2 (previously listed as UKPR alternative 7)</p> <p>We believe that this WACM, when compared to the other alternatives submitted, best</p>

	<p>Firstly, through registering multiple subsidiary enterprises as CUSC signatories, some ultimate parent companies have been able to secure a significant number of votes in the CUSC Panel election (one CUSC signatory can cast one vote). This has created a disproportionate level of influence for a select few. The proposed grouping of subsidiaries within a single CUSC 'parent company group', along with the limited voting allocation – up to a maximum of 4 (taking into account the multiple distinct roles that CUSC parties operate under) – provides a more fitting mechanism than current arrangements and better represents the makeup of the CUSC and its signatories. This approach also aligns with the BSC approach of limiting votes for one party to two commensurate with the number of BSC party roles (generator and supplier).</p> <p>UKPR also hopes and expects that engagement will be improved amongst smaller parties, who will know that their CUSC Panel votes will count towards a greater percentage of the overall total.</p> <p>It is also crucial that the CUSC panel voting process is transparent, fair and representative of the views of the wider industry. Therefore, to ensure that the optimum consumer outcomes are reached, UKPR considers it necessary for independent Panel members to join with those that are elected. The proposal addresses this need via the independent CUSC Panel member model whereby paid independent members are selected to fill any perceived knowledge and experience gaps in the CUSC Panel membership following the CUSC Panel Election. Again, this approach falls in line with the BSC approach of appointing two independent members to the panel.</p> <p>Furthermore, the current approach of selecting alternate Panel Members is questionable in view of transparency and impartiality, given that Panel members can select alternate members themselves. The introduction of a rota system to select alternates will ensure that neutrality</p>		<p>addresses the primary defects of the panel and will ultimately enhance the independence and diversity of panel members, as well as ensure wider engagement from CUSC signatories.</p>
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	<p>is always maintained: increasing the level of trust in the process.</p> <p>In addition, the proposed limit on consecutive terms served increases the likelihood of securing a wider range of views and backgrounds on the CUSC Panel and will aid in building a wider base of industry expertise by developing a broader group of individuals with experience of serving on the CUSC Panel.</p> <p>Finally, the proposed changes to the nomination and voting process under Section 8A will further increase the level of transparency – as well as trust- in the voting process. The confirmation of voting groups in advance will provide assurance that the correct number of votes are being allocated to each party. Furthermore the requirement to publish voting numbers for each CUSC candidate will allow CUSC parties to understand how many votes may be required to secure a place for their preferred candidate on the panel. This may also increase voting participation.</p>		
National Grid Electricity System Operator	<p>We previously supported the original proposal, but we believe the risk of not having adequate numbers and/or experience on the Panel in future as the result of the proposed limit on panel member tenure has not been suitably resolved and so remains a material concern. On balance, however, we believe there are merits in all other components of the original proposal and as such we support those WACMs which do not have the tenure limit component included - we believe each will further Applicable CUSC Objectives (a) and (d) due to the removal of those actual and/or perceived barriers in the election process and so the expected increase in the engagement of both smaller parties and newer entrants and potentially in the resulting panel composition. We believe that alongside the introduction of independent panel members this will provide more diversity in the overall panel experience and should therefore lead to more efficient outcomes.</p>	Yes.	We have no further comments at this stage.

	Therefore, we believe that WACM1, WACM2, WACM3 and WACM6 all better facilitate the applicable CUSC objectives with WACM2 being our preferred WACM as it is the closest to the original proposal but without the component which remains a concern as above.		
SSE Plc	<p>SSE do not believe that the original proposal better facilitates the Applicable (CUSC) objectives.</p> <p>In particular, SSE are concerned that the proposal to limit the term of office to achieve a wider engagement, whilst well intentioned, assumes a level of interest in performing the role that will not always exist. As such it increases the risk that a Panel cannot be convened, particularly during periods of relative stability with low impact change where interest to serve on Panel may well be reduced. Additionally, there is a greater risk that collective Corporate memory of the Panel reduces over time due to this limitation, thereby reducing the efficiency of the Panel over time.</p> <p>SSE do not agree therefore that therefore that the proposal aims to replace a fully democratic, elected process with an appointed process for two Panel members, which will increase costs as the new model will require appropriate remuneration. It is not obvious to us that appointed members offer greater knowledge than elected members. It is not obvious to us that appointees are able to exercise their independent judgement of each specific technical and detailed subject matter forming Panel business, any more effectively than elected members. SSE note that a mechanism (unused) already exists that would allow the regulator to appoint an additional Panel member with specific skill sets/experience where it felt the need to (noting that such an appointee would still be required to exercise independent expert opinion on each subject matter).</p> <p>SSE do not agree therefore that it is necessary to replace an elected process with an appointed process and do not support the “independent” model proposed.</p> <p>SSE believe that both aspects of the proposed solution described above</p>	Yes	No

	<p>are detrimental to ACO (d). SSE do not support the original proposal, WACM2, WACM3, WACM4 nor WACM5 therefore, as all contain one or both of these features.</p> <p>SSE are supportive of other aspects of the proposed solution, which improve transparency (publish outcome of voting) and reduce perception that undue power and influence can be brought to bear by larger market participants who control multiple CUSC signatories.</p> <p>SSE therefore support WACM1, which very marginally better facilitates ACO (b) and is an improvement against ACO (d).</p> <p>SSE therefore support both WACM1 and WACM6 with a preference for WACM1.</p>		
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## 12 Second Code Administrator Consultation Summary

Respondent	Do you believe that CMP285 better facilitates the Applicable CUSC Objectives?	Do you agree with the revised legal text?	Do you have any other comments?
Electricity North West	We believe that the increase in transparency together with the potential improvements in engagement as a result of the implementation of CMP285 will better facilitate Applicable CUSC Objective (d).	We believe that the legal text delivers on the intent of each of the proposed change proposals.	There was quite a lot of documentation to go through, for a turnaround of 5 working days, particularly for any parties that have only been able to review at this stage, so it may have been useful for a short summary to have been included.
ESB	ESB believes that the original and the alternatives all better facilitate the applicable CUSC objectives. Positive impact on A and B.	No Comment	We do not support the introduction of paid independent panel members. We believe that this would add to unnecessary costs to CUSC signatories and is impractical to implement. ESB is concerned that this measure might lead to the panel having 'independent panel members'



			<p>whose motivations are different and not in the interests of CUSC signatories necessarily.</p> <p>We agree with consecutive terms being introduced; however more than the two consecutive terms should be allowed if there isn't sufficient members on the panel.</p> <p>Our preference is for WACM 5.</p>
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## 13 Legal Text

The original proposed legal text for CMP285 can be found under Annex 3 (Section 8 Legal Text) and Annex 4 (Section 11 Legal Text) of this report.

Following instruction from the CUSC Panel a Workgroup meeting was held to discuss the proposed legal text following the initial Code Administrator Consultation. The Workgroup meeting included attendance from some members of the CUSC Panel to further discuss the legal text.

The revised legal text for CMP285 can be found under Annex 5 (Section 8) and Annex 6 (Section 11) of this report.

## 14 Impacts

### Costs

Code Administration costs	
Resource costs	<p><b>£14,520</b> - 8 Workgroup meetings</p> <p><b>£437</b> - Catering</p>
Total Code Administrator costs	<b>£13,142</b>

Industry costs (Standard CMP)	
Resource costs	<p><b>£57,173</b> – 8 Workgroup meetings</p> <p><b>£19,874</b> – 3 Consultations</p> <ul style="list-style-type: none"> <li>• 7 Workgroup meetings</li> <li>• 8 Workgroup members</li> <li>• 1.5 man days effort per meeting</li> </ul>

	<ul style="list-style-type: none"> <li>• 1.5 man days effort per consultation response</li> <li>• 7.3 consultation respondents</li> </ul>
Total Code Administrator costs	<b>£15,019</b>
Total Industry Costs	<b>£77,047</b>



## Workgroup Terms of Reference and Membership

### TERMS OF REFERENCE FOR CMP285 WORKGROUP

CMP285 seeks to reform CUSC governance to enhance the independence and diversity of Panel members and ensure wider engagement from CUSC signatories.

#### Responsibilities

1. The Workgroup is responsible for assisting the CUSC Modifications Panel in the evaluation of CUSC Modification Proposal **CMP285 'CUSC Governance Reform – Levelling the Playing Field'** tabled by **UK Power Reserve** at the Modifications Panel meeting on 28 July 2017.
2. The proposal must be evaluated to consider whether it better facilitates achievement of the Applicable CUSC Objectives. These can be summarised as follows:

#### Standard Applicable Objectives

- (a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission License;
  - (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;
  - (c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and
  - (d) Promoting efficiency in the implementation and administration of the system charging methodology.
3. It should be noted that additional provisions apply where it is proposed to modify the CUSC Modification provisions, and generally reference should be made to the Transmission Licence for the full definition of the term.

#### Scope of work

4. The Workgroup must consider the issues raised by the Modification Proposal and consider if the proposal identified better facilitates achievement of the Applicable CUSC Objectives.
5. In addition to the overriding requirement of paragraph 4, the Workgroup shall consider and report on the following specific issues:
  - a) The Workgroup can demonstrate how any proposals would increase participation (nominations or voting)
  - b) Consider how and why CUSC Signatories could be 'grouped' together and how Joint Ventures are incorporated

- c) In setting the number for total votes for a grouped CUSC Signatories detail the basis on how this has been determined
  - d) Consider the appropriate % of votes to be casted for an Election to be valid and what the process would be if this % is not achieved and what the consequences would be
  - e) Process for an active Party becoming a Dormant Party
  - f) Consider how a Panel would ensure that there was continuous experience on the Panel if a set period that a candidate could hold office for
  - g) How more smaller participants could be become more involved in the process
  - h) Consider what funding model could be used for paying for a non-CUSC Party/Independent persons to be a Panel Member
  - i) Consider whether the Panel should be fully independent or independent from a constituency.
  - j) Consider the constitution of the Panel and whether any changes should be made to the composition
  - k) Define the process for use of Alternate (e.g. would this be the Panel Member or by Code Administration or via another means)
  - l) Consider how Materially Impacted Parties non CUSC Parties could be involved further in the process
  - m) Consider the CMA findings and work performed by other Code Bodies under Code Governance and best practice from other Code Bodies
  - n) Consider what changes to the CUSC Panel are permissible, e.g. what are the boundaries in relation to the CUSC Panel in context of the Ofgem Code Governance Review/Transmission Licence
  - o) Understand any consequential impact on any other codes and how a cross code model could work.
  - p) Define criteria to understand how the value of independence is judged.
6. The Workgroup is responsible for the formulation and evaluation of any Workgroup Alternative CUSC Modifications (WACMs) arising from Group discussions which would, as compared with the Modification Proposal or the current version of the CUSC, better facilitate achieving the Applicable CUSC Objectives in relation to the issue or defect identified.
  7. The Workgroup should become conversant with the definition of Workgroup Alternative CUSC Modification which appears in Section 11 (Interpretation and Definitions) of the CUSC. The definition entitles the Group and/or an individual member of the Workgroup to put forward a WACM if the member(s) genuinely believes the WACM would better facilitate the achievement of the Applicable CUSC Objectives, as compared with the Modification Proposal or the current version of the CUSC. The extent of the support for the Modification Proposal or any WACM arising from the Workgroup's discussions should be clearly described in the final Workgroup Report to the CUSC Modifications Panel.
  8. Workgroup members should be mindful of efficiency and propose the fewest number of WACMs possible.
  9. All proposed WACMs should include the Proposer(s)'s details within the final Workgroup report, for the avoidance of doubt this includes WACMs which are proposed by the entire Workgroup or subset of members.
  10. There is an obligation on the Workgroup to undertake a period of Consultation in accordance with CUSC 8.20. The Workgroup Consultation period shall be for a period of **15 working days** as determined by the Modifications Panel.

11. Following the Consultation period the Workgroup is required to consider all responses including any WG Consultation Alternative Requests. In undertaking an assessment of any WG Consultation Alternative Request, the Workgroup should consider whether it better facilitates the Applicable CUSC Objectives than the current version of the CUSC.

As appropriate, the Workgroup will be required to undertake any further analysis and update the original Modification Proposal and/or WACMs. All responses including any WG Consultation Alternative Requests shall be included within the final report including a summary of the Workgroup's deliberations and conclusions. The report should make it clear where and why the Workgroup chairman has exercised his right under the CUSC to progress a WG Consultation Alternative Request or a WACM against the majority views of Workgroup members. It should also be explicitly stated where, under these circumstances, the Workgroup chairman is employed by the same organisation who submitted the WG Consultation Alternative Request.

12. The Workgroup is to submit its final report to the Modifications Panel Secretary on **18 January 2018** for circulation to Panel Members. The final report conclusions will be presented to the CUSC Modifications Panel meeting on **26 January 2018**.

## Membership

13. It is recommended that the Workgroup has the following members:

Role	Name	Representing
Chairman	Caroline Wright	Code Governance
National Representative	Grid Michael Oxenham	National Grid
Industry Representatives	Michael Jenner Garth Graham Robert Longden Paul Mott James Anderson Lisa Waters	UK Power Reserve (Proposer) SSE Cornwall Energy EDF Scottish Power Waters Wye
Authority Representatives	Nadir Hafeez	OFGEM
Technical secretary	Heena Chauhan	Code Governance
Observers	Claire Kerr Nadir Hafeez	ELEXON Ofgem

NB: A Workgroup must comprise at least 5 members (who may be Panel Members). The roles identified with an asterisk in the table above contribute toward the required quorum, determined in accordance with paragraph 14 below.

14. The chairman of the Workgroup and the Modifications Panel Chairman must agree a number that will be quorum for each Workgroup meeting. The

agreed figure for CMP285 is that at least 5 Workgroup members must participate in a meeting for quorum to be met.

15. A vote is to take place by all eligible Workgroup members on the Modification Proposal and each WACM. The vote shall be decided by simple majority of those present at the meeting at which the vote takes place (whether in person or by teleconference). The Workgroup chairman shall not have a vote, casting or otherwise]. There may be up to three rounds of voting, as follows:
  - Vote 1: whether each proposal better facilitates the Applicable CUSC Objectives;
  - Vote 2: where one or more WACMs exist, whether each WACM better facilitates the Applicable CUSC Objectives than the original Modification Proposal;
  - Vote 3: which option is considered to BEST facilitate achievement of the Applicable CUSC Objectives. For the avoidance of doubt, this vote should include the existing CUSC baseline as an option.

The results from the vote and the reasons for such voting shall be recorded in the Workgroup report in as much detail as practicable.

16. It is expected that Workgroup members would only abstain from voting under limited circumstances, for example where a member feels that a proposal has been insufficiently developed. Where a member has such concerns, they should raise these with the Workgroup chairman at the earliest possible opportunity and certainly before the Workgroup vote takes place. Where abstention occurs, the reason should be recorded in the Workgroup report.
17. Workgroup members or their appointed alternate are required to attend a minimum of 50% of the Workgroup meetings to be eligible to participate in the Workgroup vote.
18. The Technical Secretary shall keep an Attendance Record for the Workgroup meetings and circulate the Attendance Record with the Action Notes after each meeting. This will be attached to the final Workgroup report.
19. The Workgroup membership can be amended from time to time by the CUSC Modifications Panel.

## Appendix 1 – Updated Proposed CMP285 Timetable

### Workgroup Stage

20 July 2017	CUSC Modification Proposal submitted
<b>28 July 2017</b>	Modification Presented to the Panel
1 August 2017	Request for Workgroup Members (10 working days)
28 September 2017	<b>Meeting 1</b> to ensure Workgroup members have a fully understanding of the context of the modification and Terms and Reference
7 November 2017	<b>Meeting 2</b> – Review of evidence from Workgroup Activities List and agree next steps and confirm Workgroup consultation requirements
27 November 2017	<b>Meeting 3</b> – Draft Workgroup Consultation Report
January to March 2018	Meetings to agree WG rpt
<b>April 2018</b>	Workgroup Consultation issued to the Industry (15WD)
May 2018 to July 2018	Workgroup Meeting - Workgroup review consultation responses, agree options, finalise legal text and WG vote
<b>August 2018</b>	Workgroup Report issued to CUSC Panel
<b>August 2018</b>	CUSC Panel meeting to discuss Workgroup Report

### Code Administrator Stage

<b>September 2018</b>	Code Administration Consultation Report issued to the Industry (15 WD)
<b>October 2018</b>	Draft FMR published for industry comment (5 Working days)
<b>November 2018</b>	Draft Final Modification Report presented to Panel
<b>November 2018</b>	CUSC Panel Recommendation vote
<b>December 2018</b>	Final Modification Report issued the Authority
<b>January/February 2019</b>	Indicative Decision for the Authority
<b>1 April 2019</b>	Decision implemented in CUSC
<b>Effective from date</b>	<b>Panel Election 2019</b>



A – Attended  
X – Absent  
A/D – Dial-in

Name	Company	Role	28-Sep-2017	07-Nov-2017	27-Nov-2017	22-Jan-2018	17-Jul-2018	25-Oct-2018	19-Nov-2018
Caroline Wright	Code Admin	Chair	A	A	A	A	X	X	X
Heena Chauhan	Code Admin	Tec Sec	A	X	X	X	X	X	X
Lurrentia Walker	Code Admin	Tec Sec	X	A	A	A	X	Y	A/D
Shazia Akhtar	Code Admin	Chair	X	X	X	X	A	Y	A/D
Michael Jenner (Proposer)	UKPR	WG Member	A	A	A	A	A	Y	A/D
Garth Graham	SSE	WG Member	X (but James A act as alternate)	X	X	X	x	x	x
Andy Colley	SSE	WG Alternate	X	A/D	A/D	A/D	A	A/D	A/D
Mike Oxenham	National Grid	WG Member	A	A	A	A	A	Y	A/D
Robert Longden	Cornwall Energy	WG Member	A	A	A/D	A/D	A	X	A/D
Paul Mott	EDF Energy	WG Member	A	X	X	X	X	Y	X
Binoy Dharsi	EDF Energy	WG Alternate	X	A	A/D	A	A	X	A/D
James Anderson	Scottish Power	WG Member	A	A	A/D	X	A	Y	X
Andy Colley	Alternative for James Anderson	WG Alternative							A/D
Lisa Waters	Waters Wye (Nominated by Severn Power Limited)	WG Member	A/D	A/D	A/D	A/D	X	X	A/D
Kyran Hanks	Waters Wye (Nominated by Severn Power Limited)	WG Alternate	X	X	X	X	A/D	X	X

Name	Company/role	Role	28-Sep-2017	07-Nov-2017	27-Nov-2017	22-Jan-2018	17-Jul-2018	25-Oct-2018	19-Nov-2018
Claire Kerr (observer)	ELEXON	Observer	A	A	A	A	A/D	Y	A/D
Kathryn Coffin	ELEXON	Observer	X	X	X	X	X	A/D	X
Nadir Hafeez	Ofgem	Observer	A/D	A/D	X	X	X	X	X
Trisha Quinn	Ofgem	Observer	X	A/D	A/D	A/D	A/D	X	A/D
James Jackson	UKPR	Observer	X	X	X	X	A	Y	A/D

The legal text for this Modification can be found via the following link:

<https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/cusc-governance-reform-leveling-playing>

Below is a summary table below which sets out a list of new definitions in respect of the Original proposal and each WACM.

Document	New definitions
Original	<ol style="list-style-type: none"> <li>1. CMP285 Implementation Date</li> <li>2. Demand Voting Group</li> <li>3. Generation Voting Group</li> <li>4. Independent Member(s)</li> <li>5. Interconnector Voting Group</li> <li>6. Supplier Voting Group</li> <li>7. Voting Group</li> </ol>
WACM1	<ol style="list-style-type: none"> <li>1. Demand Voting Group</li> <li>2. Generation Voting Group</li> <li>3. Interconnector Voting Group</li> <li>4. Supplier Voting Group</li> <li>5. Voting Group</li> </ol>
WACM2	<ol style="list-style-type: none"> <li>1. Demand Voting Group</li> <li>2. Generation Voting Group</li> <li>3. Independent Member(s)</li> <li>4. Interconnector Voting Group</li> <li>5. Supplier Voting Group</li> <li>6. Voting Group</li> </ol>
WACM3	<ol style="list-style-type: none"> <li>1. Independent Member(s)</li> </ol>
WACM4	<ol style="list-style-type: none"> <li>1. CMP285 Implementation Date</li> <li>2. Independent Member(s)</li> </ol>
WACM5	<ol style="list-style-type: none"> <li>1. CMP285 Implementation Date</li> <li>2. Demand Voting Group</li> <li>3. Generation Voting Group</li> <li>4. Interconnector Voting Group</li> <li>5. Supplier Voting Group</li> <li>6. Voting Group</li> </ol>
WACM6	None

The legal text for this Modification can be found via the following link:

<https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/cusc-governance-reform-leveling-playing>

The revised legal text for this Modification can be found via the following link:

<https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/cusc-governance-reform-leveling-playing>

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## CUSC Workgroup Consultation Response Proforma

### CMP285 'CUSC Governance Reform – Levelling the Playing Field'

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **10 September 2018** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Shazia Akhtar at [Shazia.akhtar2@nationalgrid.com](mailto:Shazia.akhtar2@nationalgrid.com)

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>Joshua Logan</i> <i>01757 612736</i>
<b>Company Name:</b>	<i>Drax Group Plc</i>
Please express your views regarding the Workgroup Consultation, including rationale.  (Please include any issues, suggestions or queries)	For reference, the Applicable Standard CUSC objectives are:  (a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;  (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;  (c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and  (d) Promoting efficiency in the implementation and administration of the CUSC arrangements.  *Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

## Standard Workgroup consultation questions

Q	Question	Response
1	<p><b>Do you believe that CMP285 Original proposal, better facilitates the Applicable CUSC Objectives?</b></p>	<p>We agree that voting reform is necessary and support the proposal to place parties into a voting group and limit the number of votes. We consider that this is the only necessary part of the proposal required to rectify the defect. As such, in its current form, we believe that CMP285 may marginally better facilitate the CUSC Objectives. We have several concerns about other aspects of the proposal which will be explored in later questions.</p> <p><b>Standard Applicable CUSC Objective (d) – Positive</b></p> <p>A voting system that fairly apportions the number of votes will ensure that members are elected in a way that represents the whole industry.</p> <p>We strongly support grouping CUSC parties together into a voting group and limiting the number of votes a that a voting group has. This will resolve concerns that some companies have an unfair and disproportionate share of the votes. In this sense we believe that CMP285 promotes efficiency in the CUSC arrangements.</p> <p>We have concerns around the following:</p> <ul style="list-style-type: none"> <li>• Why limiting to four votes is an appropriate number and the rationale for this choice.</li> <li>• Limiting the number of consecutive terms that panel members can serve.</li> <li>• The arrangements to facilitate independent members.</li> <li>• The selection of panel alternates to be used.</li> </ul>
2	<p><b>Do you support the proposed implementation approach?</b></p>	<p>Yes, implementing changes in time to take affect for the 2019 CUSC Panel Elections is a sensible approach.</p> <p>We also support the non-retrospective approach whereby all the changes would come into effect without referring to previous years members served on the CUSC panel.</p>
3	<p><b>Do you have any other comments?</b></p>	<p>Yes, rather than just being nominated at the sole discretion of The Company, we would support a process where the chair is nominated by the panel in consultation with The Company, and is then approved/ rejected by the authority.</p>



Q	Question	Response
4	<b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b>	<i>If yes, please complete a WG Consultation Alternative Request form, available on National Grid's website<sup>1</sup>, and return to the CUSC inbox at <a href="mailto:cusc.team@nationalgrid.com">cusc.team@nationalgrid.com</a></i>

#### Specific questions for CMP285

Q	Question	Response
5	<b>Do you think the draft legal text delivers the intent of the revised Proposal?</b>	<p>Yes, however we believe there are several points that require clarification in the report.</p> <p>In section 4.1(g), the report states that the proposers view is "CUSC Panel Members should give five Working Days' notice of planned absence from the CUSC Panel". It then goes on to explain that "It is possible that this time period could be reduced to three Working Days' ". In the legal text it is the three day option that is being proposed, this should be made clear in the report.</p> <p>In section 4.1(i) the report explains, "It was the view of the Proposer that under CMP285 a four year consecutive term limit would be introduced so a Panel Member could only stand for two consecutive terms". We note that in the legal text this part of the proposal only applies to elected industry panel members and independent panel members, not the two appointed by The Company, the consumer representative and the authority representative (we express our views regarding this in Question 10). It should be made clear in the report why the proposal to limit terms does not apply to all panel members.</p>

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<sup>1</sup> <https://www.nationalgrid.com/uk/electricity/codes/connection-and-use-system-code-cusc/cusc-modifications>

Q	Question	Response
6	<p><b>As per the revised Proposal, do you believe that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC panel elections?</b></p>	<p>We support grouping parties into a voting group and limiting the number of votes that a voting group can cast. We believe that this is the only aspect of this modification required to address the perceived defect.</p> <p>We do not support limiting the votes to a maximum of four based on what roles the signatories in the voting group have, this goes against the principles of this modification. We believe that each voting group should have the same number of votes, in the BSC, every trading party or trading party group gets two votes, one for each account. Whilst this approach makes sense from a BSC perspective, from a CUSC perspective we think that the sensible approach is to limit the number of votes to one for each voting group.</p> <p>This will prevent situations that could be deemed inequitable where, for example, one voting group with 20 signatories that are all generators gets only one vote, whereas a voting group with four signatories, one for each party role, gets four votes.</p>
7	<p><b>Do you have any alternative suggestions on how to ensure that some parent companies of CUSC parties are not able to potentially exercise overwhelming control over cumulative CUSC panel votes?</b></p>	<p>Apart from grouping signatories into a voting group and limiting the number of votes that can be cast, no.</p>
8	<p><b>As per the revised Proposal, do you support an independent model i.e. two independent (and salaried) panel members to join the remaining five user elected panel members?</b></p>	<p>No, whilst we see merit in having independent panel members to provide a non-biased opinion, we believe that reducing the number of panel members that industry can elect from seven to five actually goes against the principles of diversity and reduces the choice of nominees that industry can elect.</p> <p>We do not consider it appropriate that The Company selects the independent members, a better approach would be that the panel chair through consultation with panel members should appoint the independent members. This is a more transparent process than the proposed and ensures that the industry elected members have input into which independent members are selected.</p>

Q	Question	Response
9	<p><b>As per the revised Proposal, do you believe that the independent panel members should be remunerated for their services and do you believe the proposed remuneration arrangements are appropriate?</b></p>	<p>Yes, should independent panel members be introduced, they should be remunerated for their services.</p> <p>We do not support the company having sole discretion of remuneration arrangements, it seems prudent to align the remuneration arrangements with that of the BSC panel.</p>
10	<p><b>As per the revised Proposal, do you agree that the consecutive terms of office of panel members should be time limited? If so, is the proposed two consecutive term limit (i.e. four years before a panel member would have to take a one term break before standing for election again) appropriate?</b></p>	<p>No, we do not agree that the number of consecutive terms served by panel members should be limited. We believe this is unnecessary, if parties are placed in voting groups with a limited number of votes this will ensure that the voting process is fair and representative of industry. If people were to be re-elected for consecutive terms this would reflect the desire of industry, restricting the number of terms panel members can stand for election will only limit the choice of candidates for parties to choose from.</p> <p>Should a consecutive term limit be put in place, this should not just be an arbitrary length of time, we do not understand why two years is the appropriate amount.</p> <p>In Q5 we note that the limit is only proposed for independent and industry elected members. We deem this to be discriminatory and not in line with the principles of this modification, should a limit be introduced, this should apply to all panel members, including the two elected by The Company, the consumer representative and the Ofgem representative.</p>
11	<p><b>Do you believe there is a need to build greater knowledge and experience of CUSC matters across the industry? If so, does the revised Proposal help to share the knowledge and experience by ensuring a wider range of individuals sit on the panel over time?</b></p>	<p>We do not fully understand the “gateway” procedure that is explained in the report. Section 8.4.3 of the CUSC gives Ofgem the power to appoint another Panel Member should they consider there to be a gap in expertise amongst the panel. This can be done at any point, not just at the CUSC Panel Election stage. On this basis, we are not convinced the proposal to evaluate the knowledge of elected members and recruit independent members to fill any gaps is necessary.</p> <p>We also agree with some workgroup members that because of the very technical and specific nature of some CUSC proposals put forward to the Panel, having independent panel members may not necessarily mean there will be increased expertise on the panel.</p>

Q	Question	Response
12	<p><b>As per the revised Proposal, do you agree with the suggested use of panel alternates whereby panel members would no longer be able to select an alternate in their absence and alternates would instead be allocated on the basis of being selected by the chair, or being next of a rota?</b></p>	<p>We support the use of a rota whereby a list of the alternates is randomly generated and when an alternate is required, the top one on the list attends. The next time an alternate is required the alternate below them on the list attends. When all alternates have attended the list would start from the beginning. This is a much simpler and transparent process compared to letting the chair select a member at his sole discretion.</p>
13	<p><b>As per the revised Proposal, do you agree with the proposed changes to the nomination and voting process under Section 8A i.e. nominated candidates must provide additional information and parties wishing to vote must confirm their Voting Group to the Code Administrator in advance?</b></p>	<p>Yes, this is similar to BSC arrangements and works well. It's important that parties have the opportunity to review their voting group and notify the Code Administrator of any changes prior to an election.</p>

## CUSC Workgroup Consultation Response Proforma

### CMP285 'CUSC Governance Reform – Levelling the Playing Field'

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **10 September 2018** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Shazia Akhtar at [Shazia.akhtar2@nationalgrid.com](mailto:Shazia.akhtar2@nationalgrid.com)

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>James Anderson</i> <i>James.anderson@scottishpower.com</i>
<b>Company Name:</b>	<i>ScottishPower Energy Management Limited</i>
Please express your views regarding the Workgroup Consultation, including rationale.  (Please include any issues, suggestions or queries)	For reference, the Applicable Standard CUSC objectives are:  (a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;  (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;  (c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and  (d) Promoting efficiency in the implementation and administration of the CUSC arrangements.  *Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

## Standard Workgroup consultation questions

Q	Question	Response
1	<b>Do you believe that CMP285 Original proposal, better facilitates the Applicable CUSC Objectives?</b>	<p>On balance, the CMP285 Original proposal does not better meet the Applicable CUSC Objectives.</p> <p>The Proposer has not provided any evidence that the current CUSC governance regime is detrimental to competition.</p> <p>The CUSC Panel has a limited role in the change process; the Panel vote simply provides a recommendation to the Authority and its' only impact is in determining a potential route of appeal against an Authority decision. It is not clear that the Original proposal will better facilitate Applicable Objective (b).</p> <p>The Original proposal introduces additional complexity into the CUSC governance regime and in the absence of clearly defined benefits elsewhere, this is detrimental to Applicable Objective (d).</p>
2	<b>Do you support the proposed implementation approach?</b>	If the Original proposal is implemented it should be implemented in time for the 2019 CUSC election.
3	<b>Do you have any other comments?</b>	No.
4	<b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b>	<p><i>If yes, please complete a WG Consultation Alternative Request form, available on National Grid's website<sup>1</sup>, and return to the CUSC inbox at <a href="mailto:cusc.team@nationalgrid.com">cusc.team@nationalgrid.com</a></i></p> <p>No.</p>

## Specific questions for CMP285

Q	Question	Response
5	<b>Do you think the draft legal text delivers the intent of the revised Proposal?</b>	From a quick review of the draft legal text, it appears to deliver the intent of the revised Proposal.

<sup>1</sup> <https://www.nationalgrid.com/uk/electricity/codes/connection-and-use-system-code-cusc/cusc-modifications>

Q	Question	Response
6	<p><b>As per the revised Proposal, do you believe that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC panel elections?</b></p>	<p>Yes. If a review of voting arrangements is to be carried out, grouping of CUSC signatories into voting groups would appear to provide for more representative voting.</p> <p>In addition, aligning the process with a similar process under the BSC will provide commonality to parties less familiar with the code governance process.</p>
7	<p><b>Do you have any alternative suggestions on how to ensure that some parent companies of CUSC parties are not able to potentially exercise overwhelming control over cumulative CUSC panel votes?</b></p>	<p>No. The use of voting groups appears to work under the BSC and would appear to be an appropriate model for CUSC governance.</p>
8	<p><b>As per the revised Proposal, do you support an independent model i.e. two independent (and salaried) panel members to join the remaining five user elected panel members?</b></p>	<p>No. There has been no evidence to date that the CUSC Panel has lacked sufficient knowledge or expertise to make decisions on the change proposals presented to it. If the Panel believes that there is insufficient evidence in a Modification Report to enable it to make a decision then the report can and should be returned to the Working Group for further assessment.</p> <p>Appointment of two independent (and salaried) Panel members provides no guarantee that the requisite expertise would be available as the content of all modifications to be raised during a 2 year term cannot be known at the time of their appointment.</p> <p>The existing provision under CUSC 8.4.3 for Ofgem to appoint a further Panel member provides an adequate safeguard.</p>
9	<p><b>As per the revised Proposal, do you believe that the independent panel members should be remunerated for their services and do you believe the proposed remuneration arrangements are appropriate?</b></p>	<p>If two independent panel members are to be appointed, then they would probably have to be remunerated in order to attract candidates with relevant experience.</p> <p>In this case, mirroring the remuneration arrangements under the BSC would appear to be appropriate.</p>

Q	Question	Response
10	<p><b>As per the revised Proposal, do you agree that the consecutive terms of office of panel members should be time limited? If so, is the proposed two consecutive term limit (i.e. four years before a panel member would have to take a one term break before standing for election again) appropriate?</b></p>	<p>There is a danger that, until it is demonstrated that reviewing the electoral process will bring forward more candidates for the CUSC Panel and increase the pool of available talent, restricting the terms of office could result in a diminution in the number of candidates and a reduction in relevant experience on the Panel.</p> <p>Looking at the number of candidates in recent Panel election processes it is not clear that there are sufficient potential candidates to exclude up to one third in any election.</p>
11	<p><b>Do you believe there is a need to build greater knowledge and experience of CUSC matters across the industry? If so, does the revised Proposal help to share the knowledge and experience by ensuring a wider range of individuals sit on the panel over time?</b></p>	<p>Yes there is a need to build greater knowledge and experience of CUSC matters across the industry. However, it is not clear that membership of the CUSC Panel is the only or best way to increase this knowledge and experience. Wider engagement in the change process through TCMF, CISG and membership of membership working groups allows direct engagement with the issues under consideration and the ability for Parties to contribute and have their views recorded and presented to the Authority when making its determination.</p>
12	<p><b>As per the revised Proposal, do you agree with the suggested use of panel alternates whereby panel members would no longer be able to select an alternate in their absence and alternates would instead be allocated on the basis of being selected by the chair, or being next of a rota?</b></p>	<p>No. We agree that Panel members should no longer be able to select an alternate in their absence. However, in order to encourage individuals to contribute as Panel Alternates and remain fully briefed and engaged in the change process, Alternates should be given every opportunity to participate when a Panel member is unable to attend. We do not believe that Alternates should be selected by the chair but by a rota thereby allowing each Alternate an equal opportunity to contribute to the process.</p>



Q	Question	Response
13	<p><b>As per the revised Proposal, do you agree with the proposed changes to the nomination and voting process under Section 8A i.e. nominated candidates must provide additional information and parties wishing to vote must confirm their Voting Group to the Code Administrator in advance?</b></p>	<p>Requiring parties to confirm their Voting Group (8.1.1.4) to ensure entitlement to vote could potentially result in the disenfranchisement of a number of smaller parties and is an unnecessary bureaucratic step. Requiring Parties to inform the Code Administrator of any errors in the published list of Users should be sufficient (as required in the BSC).</p> <p>It is not clear that the additional disclosure requirements on Panel Members and Alternates at 8.3.4 (b) (iii) adds any additional assurance of independence where the party has already provided the employer declaration under 8.3.4 (b) (ii). However, this appears to be a reasonable requirement on any Independent Panel Member.</p>

## CUSC Workgroup Consultation Response Proforma

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Any queries on the content of the consultation should be addressed to Shazia Akhtar at [Shazia.akhtar2@nationalgrid.com](mailto:Shazia.akhtar2@nationalgrid.com)

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	James Jackson <a href="mailto:james.jackson@ukpowerreserve.com">james.jackson@ukpowerreserve.com</a>
<b>Company Name:</b>	UK Power Reserve
Please express your views regarding the Workgroup Consultation, including rationale.  (Please include any issues, suggestions or queries)	For reference, the Applicable Standard CUSC objectives are:  (a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;  (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;  (c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and  (d) Promoting efficiency in the implementation and administration of the CUSC arrangements.  *Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

## Standard Workgroup consultation questions

Q	Question	Response
1	<b>Do you believe that CMP285 Original proposal, better facilitates the Applicable CUSC Objectives?</b>	<p>Yes. The voting process as it is currently set out does not allow for sufficient diversity and independence, resulting in a Panel that has failed to represent the industry as a whole.</p> <p>CMP285 sets out a number of initiatives to increase the transparency and fairness of the process to elect CUSC Panel Members. This is primarily achieved by ensuring that certain parties are no longer able to hold a disproportionate influence over the election of Panel Members.</p> <p>Furthermore, the proposal gives the potential for a greater diversity of backgrounds on the CUSC Panel, ultimately increasing interest, confidence and the perceived independence of the Panel.</p>
2	<b>Do you support the proposed implementation approach?</b>	<p>Yes. UKPR consider the proposed implementation approach to be suitable.</p> <p>It is vital that the recommended timeframes outlined in the workgroup report are adhered to in order for the necessary CUSC governance changes to be made ahead of the 2019 CUSC Panel elections.</p>
3	<b>Do you have any other comments?</b>	No.
4	<b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b>	<p><i>If yes, please complete a WG Consultation Alternative Request form, available on National Grid's website<sup>1</sup>, and return to the CUSC inbox at <a href="mailto:cusc.team@nationalgrid.com">cusc.team@nationalgrid.com</a></i></p> <p>No.</p>

## Specific questions for CMP285

Q	Question	Response
5	<b>Do you think the draft legal text delivers the intent of the revised Proposal?</b>	Yes. The text is reflective of the workgroup report and discussions and in doing so delivers the intent of the proposal.

<sup>1</sup> <https://www.nationalgrid.com/uk/electricity/codes/connection-and-use-system-code-cusc/cusc-modifications>

Q	Question	Response
6	<p><b>As per the revised Proposal, do you believe that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC Panel elections?</b></p>	<p>Yes. Currently, some large industry players are able to exercise overwhelming dominance when voting for CUSC Panel members.</p> <p>Through registering multiple subsidiary enterprises as CUSC signatories, some ultimate parent companies have been able to secure a significant number of votes in the CUSC Panel election (one CUSC signatory can cast one vote). This has created a disproportionate level of influence for a select few.</p> <p>By way of example, UKPR analysis suggests that in 2017, the number of CUSC signatories under the control of large incumbent companies amounted to 103. Assuming that these larger CUSC parties cast all their votes in the 2015 CUSC election, it would be evident that the incumbents dominated the 2015 election process as only 104 votes were cast.</p> <p>The proposed grouping of signatories – taking into account the controlling parent company structure – follows a similar methodology to that used by Elexon for the BSC Panel election voting process. However, rather than giving trading parties two votes – one each for their production and consumption accounts – the proposal allows for four votes, taking into account the multiple distinct roles that CUSC parties operate under. UKPR consider the voting limit to be more fitting than current arrangements, as well as more representative of the makeup of the CUSC and its signatories.</p> <p>This amendment to voting groups will also help to ensure that some parent companies of CUSC parties are not able to exercise overwhelming control over cumulative CUSC Panel votes. In addition, UKPR hope and expect that engagement will be improved amongst smaller parties, who will know that their CUSC Panel votes will count towards a greater percentage of the overall total.</p>
7	<p><b>Do you have any alternative suggestions on how to ensure that some parent companies of CUSC parties are not able to potentially exercise overwhelming control over cumulative CUSC Panel votes?</b></p>	<p>No. UKPR support the suggested methodology outlined in the revised proposal.</p>

Q	Question	Response
8	<p><b>As per the revised Proposal, do you support an independent model i.e. two independent (and salaried) Panel members to join the remaining five user elected Panel members?</b></p>	<p>Yes. In order to ensure that the optimum consumer outcomes are reached, it is vital that independent Panel members are able to join with those that are elected. This will fill any potential knowledge and experience gaps in the CUSC Panel membership following the CUSC Panel Election, as well as provide an alternative viewpoint beyond that available from those employed by CUSC signatories.</p> <p>In addition, the appointments will provide further assurance that the Panel is acting in an independent and transparent manner.</p>
9	<p><b>As per the revised Proposal, do you believe that the independent Panel members should be remunerated for their services and do you believe the proposed remuneration arrangements are appropriate?</b></p>	<p>Yes. The proposed remuneration follows that used in wider industry, with the rates reflective of the BSC Panel's independent members' remuneration. UKPR consider the arrangements to be appropriate and in line with best practice. The long-term funding arrangements for such remuneration should be addressed by Ofgem during the RIIO T2 process. However, before the RIIO T2 process is concluded the independent members should be funded using the CUSC secretariat budget.</p>
10	<p><b>As per the revised Proposal, do you agree that the consecutive terms of office of Panel members should be time limited? If so, is the proposed two consecutive term limit (i.e. four years before a Panel member would have to take a one term break before standing for election again) appropriate?</b></p>	<p>Yes. The use of this methodology increases the likelihood of securing a wider range of views and backgrounds on the CUSC Panel and will aid in building a wider base of industry expertise by developing a broader group of individuals with experience of serving on the CUSC Panel.</p> <p>The proposed consecutive term limit provides an appropriate method for administering this.</p>
11	<p><b>Do you believe there is a need to build greater knowledge and experience of CUSC matters across the industry? If so, does the revised Proposal help to share the knowledge and experience by ensuring a wider range of individuals sit on the Panel over time?</b></p>	<p>Yes. As previously stated, the current and previous makeup of the CUSC Panel has been dominated by incumbent members, with several Panel Members having been in office for – or close to – 10 years. The present voting arrangements provide smaller participants with very limited opportunity for involvement, and as a result limits the sharing of knowledge and experience amongst wider industry.</p> <p>The revised proposal allows for sufficient expert knowledge to be retained, whilst simultaneously allowing others to gain experience.</p>

Q	Question	Response
12	<p><b>As per the revised Proposal, do you agree with the suggested use of Panel alternates whereby Panel members would no longer be able to select an alternate in their absence and alternates would instead be allocated on the basis of being selected by the chair, or being next of a rota?</b></p>	<p>Yes. Allowing the chair to select the Panel alternate – rather than allowing the absent Panel member to make the selection – will allow impartiality to be maintained at all times.</p> <p>It also affords the chair the opportunity to select a member whose expertise are relevant to the modification under consideration.</p> <p>UKPR consider this to be a more robust process than currently in place; ultimately reducing the opportunities for manipulating voting and decision making or the perception that voting can be manipulated.</p>
13	<p><b>As per the revised Proposal, do you agree with the proposed changes to the nomination and voting process under Section 8A i.e. nominated candidates must provide additional information and parties wishing to vote must confirm their Voting Group to the Code Administrator in advance?</b></p>	<p>Yes. The proposed changes will further increase the level of transparency – as well as trust – in the voting process.</p> <p>The confirmation of voting groups in advance will provide assurance that the correct number of votes are being allocated to each party.</p>



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[citizensadvice.org.uk](http://citizensadvice.org.uk)

**06 September 2018**

**Citizens Advice response to CUSC Workgroup consultation: CMP285 CUSC Governance Reform - Levelling the Playing Field**

Dear Shazia,

We are pleased to be able to respond to this consultation. Citizens Advice has statutory responsibilities to represent the interests of energy consumers in Great Britain. This document is entirely non-confidential and may be published on your website. If you would like to discuss any matter raised in more detail please do not hesitate to get in contact.

We welcome changes to CUSC Governance to provide transparency and to level the playing field between the larger and smaller CUSC parties.

We have outlined answers to the questions in the consultation below.

**Question 1: Do you believe that CMP285 Original proposal, better facilitates the Applicable CUSC Objectives?**

Yes. In particular, this Proposal better facilitates Applicable CUSC Objectives:

- (b) - By providing more access to CUSC parties of a smaller size, this will level the playing field. It will enable CUSC Parties of any size to have a more equal say on the outcome of CUSC matters and therefore this should promote greater competition.
- (d) - The implementation and administration of CUSC arrangements will be improved by greater participation of a larger number of CUSC Parties. This should improve the diversity of views within the CUSC administration process.

**Question 2: Do you support the proposed implementation approach?**

We support the proposed implementation approach.

**Question 3: Do you have any other comments?**

It is important that implementation is achieved in time for the next round of CUSC panel elections in 2019 and wish for the workgroup to review any Alternative Requests as soon as possible so that implementation is not delayed.

**Question 4: Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?**

No.

**Question 5: Do you think the draft legal text delivers the intent of the revised Proposal?**

We believe that the draft legal text does deliver the overall intent of the revised Proposal. While we have not assessed this in detail it is useful to see draft legal text as part of a workgroup report, however we would not advocate for this to be the norm.

**Question 6: As per the revised Proposal, do you believe that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC panel elections?**

The proposed approach appears to be logical. Importantly, this approach is similar to the BSC model where Trading Parties are allowed a maximum of 2 votes, based on the number of Energy Accounts they hold.

**Question 7: Do you have any alternative suggestions on how to ensure that some parent companies of CUSC parties are not able to potentially exercise overwhelming control over cumulative CUSC panel votes?**

Not answered.

**Question 8: As per the revised Proposal, do you support an independent model i.e. two independent (and salaried) panel members to join the remaining five user elected panel members?**

In principle, we support the inclusion of independent panel members joining the CUSC panel. As a member of the BSC panel, we see the benefits of having independent panel members. They have the potential to provide a different perspective on issues outside of the normal CUSC party viewpoint and are less likely to take decisions on the basis of the impact on certain parts of industry. However, this will add additional cost to the code administrator's role.

**Question 9: As per the revised Proposal, do you believe that the independent panel members should be remunerated for their services and do you believe the proposed remuneration arrangements are appropriate?**



In order to attract the best people to sit as independent panel members, they should be remunerated for their time and work. The arrangements should be aligned, or similar, with remuneration of independent panel members on BSC panel as there is already a precedent.

We note that the code administrator does not have the funding within the current price control framework (RIIO-T1) for this element of the Proposal. Therefore, it is likely that Ofgem would be required to provide approval for pass-through funding to allow this proposal to be implemented.

**Question 10: As per the revised Proposal, do you agree that the consecutive terms of office of panel members should be time limited? If so, is the proposed two consecutive term limit (i.e. four years before a panel member would have to take a one term break before standing for election again) appropriate?**

In principle, this seems a sensible approach as many of the current panel members have been part of the CUSC panel for a considerable amount of time which may have negative perceptions across the industry and by consumers. However, there is a danger that collective corporate knowledge could be lost if the majority of panel members leave at the same time - which will be the case in 2019 as 5 of the current 7 members would be ineligible to stand for reelection.

Participating as an active member of the CUSC panel is time consuming and for smaller players this might be a reason not to put themselves forward for election. If this Proposal fails to generate sufficient additional interest from potential new panel members then there might be a situation where there are not enough people who are nominated for the panel. In this event CUSC does not have a codified method to deal with this situation.

**Question 11: Do you believe there is a need to build greater knowledge and experience of CUSC matters across the industry? If so, does the revised Proposal help to share the knowledge and experience by ensuring a wider range of individuals sit on the panel over time?**

We see a need to build greater knowledge and experience of CUSC matters across the industry and how these matters impact consumers. In theory, the revised Proposal should open up the panel to a wider range of industry representatives over time. However, as noted in our response to question 10, many new players in the industry are small and have little time to devote to code panels. Therefore, to enable wider engagement with CUSC there is a responsibility of the code administrator to actively increase participation in CUSC matters.

**Question 12: As per the revised Proposal, do you agree with the suggested use of panel alternates whereby panel members would no longer be able to select an alternate in their absence and alternates would instead be allocated on the basis of being selected by the chair, or being next of a rota?**

The current approach is open to criticism as panel members select alternate members themselves. Therefore, anything which promotes fairness of process, reduces the opportunity for criticism and provides additional transparency in the way in which alternate panel members are selected is welcomed.

While we note that a rota would be in place should the Chair wave their right to select an alternate, more clarity is needed on what the Chair's criteria for selection of an alternate will be to ensure transparency of selection.

**Question 13: As per the revised Proposal, do you agree with the proposed changes to the nomination and voting process under Section 8A i.e. nominated candidates must provide additional information and parties wishing to vote must confirm their Voting Group to the Code Administrator in advance?**

In context of the proposed implementation of voting groups, the proposed changes to the nomination and voting process seems reasonable to ensure fairness. We believe it is also reasonable that parent companies will be able to provide accurate information regarding the validity of their votes.

However, we would caution against this becoming an administrative burden on the code administrator. Therefore the CUSC party must be responsible for providing accurate information and not the code administrator seeking it out through additional effort.

I trust that this response is clear, but would be happy to discuss any matter raised within it in more depth if that would be helpful.

Yours sincerely

**Stew Horne**

Principal Policy Manager, Energy Networks and Systems

## CUSC Workgroup Consultation Response Proforma

### CMP285 ‘CUSC Governance Reform – Levelling the Playing Field’

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **10 September 2018** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Shazia Akhtar at [Shazia.akhtar2@nationalgrid.com](mailto:Shazia.akhtar2@nationalgrid.com)

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	Binoy Dharsi
<b>Company Name:</b>	EDF Energy
<p>Please express your views regarding the Workgroup Consultation, including rationale.</p> <p>(Please include any issues, suggestions or queries)</p>	<p>For reference, the Applicable Standard CUSC objectives are:</p> <p>(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;</p> <p>(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;</p> <p>(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and</p> <p>(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.</p> <p>*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).</p>

## Standard Workgroup consultation questions

Q	Question	Response
1	<b>Do you believe that CMP285 Original proposal, better facilitates the Applicable CUSC Objectives?</b>	On balance No. The intention of the proposal is supported but the practicality of the original proposal will not better facilitate the applicable CUSC objectives. Ofgem already has powers under the existing arrangements to appoint a panel member if it believes the appointed members are not representative. The one part of the proposal that has merit is the proposed use of panel alternates, whereby panel members would no longer be able to select an alternate in their absence; alternates would instead be allocated by code admin on the basis of being next on a rota. This idea is so good that Panel and Code Admin have already adopted it entirely since October 2017, and appears to be working well. The additional complexity of choosing appropriate panel members, length of terms that can be served could hinder the effectiveness of the panel and lead to less qualified members holding post.
2	<b>Do you support the proposed implementation approach?</b>	Yes.
3	<b>Do you have any other comments?</b>	Ofgem has not, despite its right, appointed a panel member because it felt that the elected members were not representative or balanced.  <i>“A Workgroup member advised there are current provisions in the CUSC that state that Ofgem can already appoint a further Panel Member if in its opinion there is a class or category of person (whether or not a CUSC Party or a BSC Party) who have interests in respect of the CUSC.”</i>
4	<b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b>	No

## Specific questions for CMP285

Q	Question	Response
5	<b>Do you think the draft legal text delivers the intent of the revised Proposal?</b>	Yes

Q	Question	Response
6	<b>As per the revised Proposal, do you believe that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC panel elections?</b>	The suggested proposal to limit parties to 4 votes each group is not necessary; it makes more sense for each CUSC party to have one vote, as now.
7	<b>Do you have any alternative suggestions on how to ensure that some parent companies of CUSC parties are not able to potentially exercise overwhelming control over cumulative CUSC panel votes?</b>	

Q	Question	Response
8	<p><b>As per the revised Proposal, do you support an independent model i.e. two independent (and salaried) panel members to join the remaining five user elected panel members?</b></p>	<p>The proposal envisages that the two independent panellists would not be in the employ of any CUSC signatory. The proposal envisages paying them £50k a year between them plus £1k each per meeting attended, to match BSC independent panellists (who also claim travel expenses). The existing independent panellists are not formally required to attend CUSC workgroup meetings but in practice tend to feel that they should attend a good few each year; most workgroups have a smattering of panellists on them and this is helpful in explaining basic governance to the other workgroup members. The paid independent panellists under the new definition of independent panellist, would seem unlikely to undertake this duty (unless paid another £1000 per meeting plus travel to do so, perhaps incentivising them to attend for financial reasons without necessarily contributing effectively against other more qualified workgroup members).</p> <p>The existing process to appoint panel members requires them to act independently and governance surrounding this is in place; existing independent panellists (on the existing definition of independent panellist) have good expertise and continuity. GEMA has the final say after Panel and can take account of any wider considerations that may be relevant, or late information/developments after the Panel recommendatory vote (for key changes, Ofgem will often undertake a regulatory impact assessment consultation or even commission modelling to secure the widest possible perspective and information); there is also the possibility of ultimate oversight by the CMA and the courts (as we saw with CMP264/5).</p> <p>The addition of the two independent panellists to the new model would add cost, and add a new risk losing valuable expertise due to the displacement of existing panellists and the preclusion of some experienced new panellists who could have stood on today's model, on a code which seems only to become more complex over time as the amount of relevant history from past changes/decisions, and total code text, continue to increase as more and more things are codified in the minutiae.</p>

Q	Question	Response
9	<b>As per the revised Proposal, do you believe that the independent panel members should be remunerated for their services and do you believe the proposed remuneration arrangements are appropriate?</b>	Measures should be to be taken to ensure the appropriate remuneration is received by independently appointed panel members.
10	<b>As per the revised Proposal, do you agree that the consecutive terms of office of panel members should be time limited? If so, is the proposed two consecutive term limit (i.e. four years before a panel member would have to take a one term break before standing for election again) appropriate?</b>	No, this adds a new risk losing valuable expertise due to the displacement of existing panellists, on a code which seems only to become more complex over time as the amount of relevant history from past changes/decisions, and total code text, continue to increase as more and more things are codified in the minutiae.
11	<b>Do you believe there is a need to build greater knowledge and experience of CUSC matters across the industry? If so, does the revised Proposal help to share the knowledge and experience by ensuring a wider range of individuals sit on the panel over time?</b>	<p>There is obviously a risk that as panel members come towards the end of their careers or lose a place in elections a wider knowledge base is preferable. There is however no restriction for observers to be present at a CUSC panel meeting, so this can be achieved through this route.</p> <p>The revised proposal, goes some way to achieving this objective, is redundant if the panel was open to more participants on a voluntary basis.</p>
12	<b>As per the revised Proposal, do you agree with the suggested use of panel alternates whereby panel members would no longer be able to select an alternate in their absence and alternates would instead be allocated on the basis of being selected by the chair, or being next of a rota?</b>	Yes, this part of the proposal is welcomed, and Panel and code admin have adopted it – and therefore a modification is not required to be passed to do so. As a direct result of CMP285 being raised this suggestion has already been put into place.

Q	Question	Response
13	<b>As per the revised Proposal, do you agree with the proposed changes to the nomination and voting process under Section 8A i.e. nominated candidates must provide additional information and parties wishing to vote must confirm their Voting Group to the Code Administrator in advance?</b>	The suggested proposal to limit parties to 4 votes each group is not necessary; it makes more sense for each CUSC party to have one vote. However, taking the proposal as it is, the section 8A legal text is then necessary if the proposal was implemented



## CUSC Workgroup Consultation Response Proforma

### CMP285 'CUSC Governance Reform – Levelling the Playing Field'

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **10 September 2018** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Shazia Akhtar at [Shazia.akhtar2@nationalgrid.com](mailto:Shazia.akhtar2@nationalgrid.com)

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>Mark Draper, on behalf of</i>
<b>Company Name:</b>	<i>Flexible Generation Group</i>
Please express your views regarding the Workgroup Consultation, including rationale.  (Please include any issues, suggestions or queries)	For reference, the Applicable Standard CUSC objectives are:  (a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;  (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;  (c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and  (d) Promoting efficiency in the implementation and administration of the CUSC arrangements.  *Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

## Standard Workgroup consultation questions

Q	Question	Response
1	<b>Do you believe that CMP285 Original proposal, better facilitates the Applicable CUSC Objectives?</b>	<p>Yes</p> <p>Making the CUSC Panel more representative of wider industry views and experience would enhance its decision-making ability and will improve competition in the market, as well as the efficiency of the CUSC administration.</p> <p>We think that there are some enhancements that could be made to the original proposal, but improving the governance may need incremental change and this proposal provides a good starting point.</p>
2	<b>Do you support the proposed implementation approach?</b>	Yes
3	<b>Do you have any other comments?</b>	<p>We are not convinced that fixed terms are necessary or desirable as there may be few parties willing to commit to the time to sit on Panels. In the case of the CUSC, you could also lose a lot of members at the same time as the mod is implemented and then at some elections, and it is our experience that corporate memory adds to the efficiency of governance processes.</p> <p>We also think Panel members should recuse themselves from votes on their own modifications. They should present their modification, but then withdraw for deliberation and the voting in accordance with normal good governance.</p> <p>We have not raised a specific alternative to this, but would appreciate the workgroup giving this more consideration.</p>
4	<b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b>	<i>If yes, please complete a WG Consultation Alternative Request form, available on National Grid's website<sup>1</sup>, and return to the CUSC inbox at <a href="mailto:cusc.team@nationalgrid.com">cusc.team@nationalgrid.com</a></i>

<sup>1</sup> <https://www.nationalgrid.com/uk/electricity/codes/connection-and-use-system-code-cusc/cusc-modifications>

## Specific questions for CMP285

Q	Question	Response
5	<b>Do you think the draft legal text delivers the intent of the revised Proposal?</b>	Yes
6	<b>As per the revised Proposal, do you believe that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC panel elections?</b>	Yes. This feels like it gives a better balance to the voting process. While recent industry changes, such as changes in asset owners and demergers, are making the number of votes more balanced between a larger number of parties, it would still be prudent to ensure that larger parties cannot exert undue influence over the makeup of the Panel.
7	<b>Do you have any alternative suggestions on how to ensure that some parent companies of CUSC parties are not able to potentially exercise overwhelming control over cumulative CUSC panel votes?</b>	<p>An alternative route would be to allow non-CUSC parties to register as interested parties and therefore become eligible for one vote in an election. Interested parties could be defined as, for example, those who are ancillary services providers could be eligible to vote.</p> <p>We also think Panel members should recuse themselves from votes on their own modifications. They should present their modification, but then withdraw for deliberation and the voting in accordance with normal good governance.</p>
8	<b>As per the revised Proposal, do you support an independent model i.e. two independent (and salaried) panel members to join the remaining five user elected panel members?</b>	<p>Yes, if there are interested parties that are not represented. We think that the independent Panel members add value to the BSC, but this has not always been the case. These members will need to be carefully selected to add value to the Panel, not simply to fill seats.</p> <p>We note that Ofgem now has the power to appoint independent members, but it has not done so. We would certainly not want the Panel or National Grid as code administrator to be selecting the independent experts as we would be concerned that they had a bias towards certain expertise, but it may be possible for the independent chair to lead the process.</p>
9	<b>As per the revised Proposal, do you believe that the independent panel members should be remunerated for their services and do you believe the proposed remuneration arrangements are appropriate?</b>	If the intent is to bring non-industry parties to the table, they will need to be paid. If you want industry experts who happen not be code signatories (for example an FGG member company to represent small generators) then it may be unfair to pay them but not to remunerate the reps of the elected members.

Q	Question	Response
10	<p><b>As per the revised Proposal, do you agree that the consecutive terms of office of panel members should be time limited? If so, is the proposed two consecutive term limit (i.e. four years before a panel member would have to take a one term break before standing for election again) appropriate?</b></p>	<p>No. We do not believe this is necessary once the voting rights have been altered. The fact that people have served for a long time is not in itself a problem; in fact they may bring corporate memory to the table which can be useful. However, it is right to recognise that a group of the same faces being there for a very long time is not a good thing.</p> <p>We are concerned that there may not be enough experts willing to become a Panel member and it is not clear how seats will be filled in those circumstances.</p>
11	<p><b>Do you believe there is a need to build greater knowledge and experience of CUSC matters across the industry? If so, does the revised Proposal help to share the knowledge and experience by ensuring a wider range of individuals sit on the panel over time?</b></p>	<p>It would be good if there was wider understanding of the CUSC and having a voice on the Panel and therefore someone to talk to about issues may be helpful. If smaller parties see their views being taken on board, they may also become more engaged in the CUSC change process.</p>
12	<p><b>As per the revised Proposal, do you agree with the suggested use of panel alternates whereby panel members would no longer be able to select an alternate in their absence and alternates would instead be allocated on the basis of being selected by the chair, or being next of a rota?</b></p>	<p>No.</p> <p>We think Panel members and alternates will have a better ability to maintain consistency and communication if they have their own alternates. For example, you get to know the views of the person you are an alternate for, you build ways of managing notes and information between you, etc. This can be a good way to manage alternates. If the member's alternate is not free, then should choose from an alternative pool of people.</p> <p>This part of the proposal seems to make it more difficult to arrange a Panel meeting.</p>
13	<p><b>As per the revised Proposal, do you agree with the proposed changes to the nomination and voting process under Section 8A i.e. nominated candidates must provide additional information and parties wishing to vote must confirm their Voting Group to the Code Administrator in advance?</b></p>	<p>Yes.</p> <p>However, NG should confirm to the parties what their voting group is expected to be as, between elections, parties may forget or their structure changes.</p>

## 1.1 CUSC Workgroup Consultation Response Proforma

### **CMP285 ‘CUSC Governance Reform – Levelling the Playing Field’**

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

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Any queries on the content of the consultation should be addressed to Shazia Akhtar at [Shazia.akhtar2@nationalgrid.com](mailto:Shazia.akhtar2@nationalgrid.com)

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>Graz Macdonald</i>
<b>Company Name:</b>	<i>Green Frog Power (Viridis 178)</i>
Please express your views regarding the Workgroup Consultation, including rationale.  (Please include any issues, suggestions or queries)	For reference, the Applicable Standard CUSC objectives are:  (a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;  (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;  (c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and  (d) Promoting efficiency in the implementation and administration of the CUSC arrangements.  *Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

### **Standard Workgroup consultation questions**

Q	Question	Response
1	<b>Do you believe that CMP285 Original proposal, better facilitates the Applicable CUSC Objectives?</b>	<p>Yes, absolutely.</p> <p>This proposal will clearly have a positive impact on objective D - Promoting efficiency in the implementation and administration of the CUSC arrangements. This has been well argued by the proposer.</p> <p>In addition, we feel that a transparently well-rounded CUSC panel will also have a positive impact on Objective 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. This is because the main benefit of transparency and non-dominance of the CUSC panel would be improved competitiveness in the industry. In other words, transparency is not a merit in its own right, but a merit in terms of its impact on efficiency and competitiveness – a level playing field.</p>
2	<b>Do you support the proposed implementation approach?</b>	<p>Yes, though we think that the proposer is overly conciliatory in respect to application of the mod regarding retrospectivity. We think that anyone who has served two consecutive terms already should not be able to stand for the next term. Waiting for three more years for an improvement in the domination of the CUSC panel by a few large industry parties is not acceptable.</p>
3	<b>Do you have any other comments?</b>	<p>It is not clear if there is intention to limit the terms that alternate members may serve.</p>
4	<b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b>	<p><i>If yes, please complete a WG Consultation Alternative Request form, available on National Grid's website<sup>1</sup>, and return to the CUSC inbox at <a href="mailto:cusc.team@nationalgrid.com">cusc.team@nationalgrid.com</a></i></p>

#### Specific questions for CMP285

Q	Question	Response
5	<b>Do you think the draft legal text delivers the intent of the revised Proposal?</b>	yes

<sup>1</sup> <https://www.nationalgrid.com/uk/electricity/codes/connection-and-use-system-code-cusc/cusc-modifications>

Q	Question	Response
6	<p><b>As per the revised Proposal, do you believe that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC panel elections?</b></p>	<p>Yes, though on first glance four votes seem very generous in terms of the different roles under consideration, it makes some sense, though only regarding the increase in the chances of a wider range of expertise being represented on the panel. The concern, of course, is the same one that this mod is presumably premised on, namely that parties shall vote for “their guy” regardless of expertise.</p> <p>Could this be mitigated by requiring that if any parent party would like more than one vote, representing different parts of their business, then they must also nominate more than one expert from each of the business areas?</p>
7	<p><b>Do you have any alternative suggestions on how to ensure that some parent companies of CUSC parties are not able to potentially exercise overwhelming control over cumulative CUSC panel votes?</b></p>	<p>No. We think this is a serious issue and the number of voted per party must be limited. We think that one vote per party would be ideal (notwithstanding our suggestion in question 6), but we accept that one vote per business area is an acceptable alternative, especially compared to the baseline.</p>
8	<p><b>As per the revised Proposal, do you support an independent model i.e. two independent (and salaried) panel members to join the remaining five user elected panel members?</b></p>	<p>Yes.</p> <p>It is critical that the CUSC panel is seen to be impartial.</p> <p>From casual conversations across industry, there is the widely held perception that the CUSC panel is “rigged” and that it is used to further business interests of the panel members.</p> <p>It is not relevant whether this is true or not. What is important, from an efficiency and competitiveness perspective, is that the image is improved. For smaller parties to partake in the process, they must trust that their time is well used, and that participation is not just an exercise.</p>

Q	Question	Response
9	<p><b>As per the revised Proposal, do you believe that the independent panel members should be remunerated for their services and do you believe the proposed remuneration arrangements are appropriate?</b></p>	<p>Yes.</p>
10	<p><b>As per the revised Proposal, do you agree that the consecutive terms of office of panel members should be time limited? If so, is the proposed two consecutive term limit (i.e. four years before a panel member would have to take a one term break before standing for election again) appropriate?</b></p>	<p>Yes, we support this revised proposal.</p> <p>Four years is an appropriate limit. A one term break is reasonable.</p> <p>However, we think that implementation of this mod should be retrospective. The energy system is undergoing rapid and radical change. It is more important than ever that the CUSC panel has a wide range of representatives from across the sectors during these changes.</p> <p>With SCRs underway, and many changes to network operations and charging being implemented in the next 1-3 years, it feels a little absurd to not make this change during the next election cycle. Even allowing just one more term after implementation would mean that many of the changes that will shape the system for years to come will have been made.</p>



Q	Question	Response
11	<p><b>Do you believe there is a need to build greater knowledge and experience of CUSC matters across the industry? If so, does the revised Proposal help to share the knowledge and experience by ensuring a wider range of individuals sit on the panel over time?</b></p>	<p>The CUSC has a direct impact on everyone. And yet, the knowledge and expertise is limited to a handful of experts who are paid by larger incumbents. These incumbent parties, by definition, have little expertise in the emerging markets and technologies, except to be able to identify them as a threat.</p> <p>Notwithstanding professional expertise of the individuals currently on the CUSC panel, as a matter of appearance it is prudent to provide comfort to industry that these parties are not using these positions for strategic advantage. In matters of effective market functioning and the impacts on competitiveness and consumer interest, it is <i>as important</i> that there is no <i>appearance</i> of market manipulation as that there is no market manipulation.</p> <p>So yes, it is very important that a wider range of industry representatives can descend into the trenches and develop the expertise to ensure that this critical aspect of the market is appropriately governed and designed.</p>
12	<p><b>As per the revised Proposal, do you agree with the suggested use of panel alternates whereby panel members would no longer be able to select an alternate in their absence and alternates would instead be allocated on the basis of being selected by the chair, or being next of a rota?</b></p>	<p>Yes, absolutely.</p> <p>Why would a panel member want to appoint their alternate unless they intended to direct the discussion or vote?</p>
13	<p><b>As per the revised Proposal, do you agree with the proposed changes to the nomination and voting process under Section 8A i.e. nominated candidates must provide additional information and parties wishing to vote must confirm their Voting Group to the Code Administrator in advance?</b></p>	<p>Yes.</p>

## CUSC Workgroup Consultation Response Proforma

### CMP285 'CUSC Governance Reform – Levelling the Playing Field'

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **10 September 2018** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Shazia Akhtar at [Shazia.akhtar2@nationalgrid.com](mailto:Shazia.akhtar2@nationalgrid.com)

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>Andrew Sherry</i> <a href="mailto:Andrew.Sherry@enwl.co.uk">Andrew.Sherry@enwl.co.uk</a>
<b>Company Name:</b>	<i>Electricity North West</i>
Please express your views regarding the Workgroup Consultation, including rationale.  (Please include any issues, suggestions or queries)	For reference, the Applicable Standard CUSC objectives are:  (a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;  (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;  (c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and  (d) Promoting efficiency in the implementation and administration of the CUSC arrangements.  *Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

## Standard Workgroup consultation questions

Q	Question	Response
1	<b>Do you believe that CMP285 Original proposal, better facilitates the Applicable CUSC Objectives?</b>	Further transparency and diversity would better facilitate the applicable CUSC objectives, but it would be more appropriate for a governance review to be instigated to better achieve the proposer's aims.
2	<b>Do you support the proposed implementation approach?</b>	If this change were progressed then we do support the implementation approach, although the timescale for implementation might be difficult to achieve. The approach suggests there will be no additional costs beyond incidental costs, however if there are, for example, three independent panel members costs will increase.
3	<b>Do you have any other comments?</b>	It is essential that all parties are treated the same including a level playing field when it comes to voting rights under the CUSC. Consequently, rather than progress a single change it may be more appropriate to instigate a full independent governance review.
4	<b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b>	<i>If yes, please complete a WG Consultation Alternative Request form, available on National Grid's website<sup>1</sup>, and return to the CUSC inbox at <a href="mailto:cusc.team@nationalgrid.com">cusc.team@nationalgrid.com</a></i>

## Specific questions for CMP285

Q	Question	Response
5	<b>Do you think the draft legal text delivers the intent of the revised Proposal?</b>	We believe the draft legal text delivers the intent.

<sup>1</sup> <https://www.nationalgrid.com/uk/electricity/codes/connection-and-use-system-code-cusc/cusc-modifications>

Q	Question	Response
6	<p><b>As per the revised Proposal, do you believe that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC panel elections?</b></p>	<p>This grouping does seem to be a reasonable solution, with the number of votes limited to four based on the roles undertaken (considering the detail in the consultation document suggesting that some parent company structures, for example, SSE and RWE Npower provide for 25 and 22 votes respectively to be cast.</p>
7	<p><b>Do you have any alternative suggestions on how to ensure that some parent companies of CUSC parties are not able to potentially exercise overwhelming control over cumulative CUSC panel votes?</b></p>	<p>A wider governance review could consider any alternative solutions.</p>
8	<p><b>As per the revised Proposal, do you support an independent model i.e. two independent (and salaried) panel members to join the remaining five user elected panel members?</b></p>	<p>Similar to the BSC Panel, two independent panel members does seem reasonable, and we would support this element of the proposal, understanding that this will ultimately increase costs to the industry, but may improve overall governance outcomes.</p>
9	<p><b>As per the revised Proposal, do you believe that the independent panel members should be remunerated for their services and do you believe the proposed remuneration arrangements are appropriate?</b></p>	<p>Where there are independent panel members then yes it would seem appropriate for them to be remunerated and mirroring the approach taken under the BSC provides some consistency.</p>

Q	Question	Response
10	<p><b>As per the revised Proposal, do you agree that the consecutive terms of office of panel members should be time limited? If so, is the proposed two consecutive term limit (i.e. four years before a panel member would have to take a one term break before standing for election again) appropriate?</b></p>	<p>We do believe there is a benefit from continuity and the expertise built up over multiple terms, particularly as these are elected representatives and part of this proposal is the inclusion of independent members to provide more balance to the panel.</p>
11	<p><b>Do you believe there is a need to build greater knowledge and experience of CUSC matters across the industry? If so, does the revised Proposal help to share the knowledge and experience by ensuring a wider range of individuals sit on the panel over time?</b></p>	<p>The CUSC is a technical document and difficult read; doesn't lend itself to Plain English.</p> <p>Consequently anything that can be done to build greater knowledge and experience is helpful. However, while this proposal may encourage individuals to sit on the panel, I'm not sure issuing, what at first glance looked like, a 180 page Workgroup Consultation document would endear them to the process. Maybe we should have separated the legal text for Section 8 and Section 11 into individual attachments?</p> <p>The governance review would be a good platform for this to be reviewed and it would be useful to collaborate with the other code administrators to share best practise.</p>
12	<p><b>As per the revised Proposal, do you agree with the suggested use of panel alternates whereby panel members would no longer be able to select an alternate in their absence and alternates would instead be allocated on the basis of being selected by the chair, or being next of a rota?</b></p>	<p>We don't believe this to be appropriate as a panel member would have a designated alternate. Would this approach impact the quoracy of the panel?</p>

Q	Question	Response
13	<b>As per the revised Proposal, do you agree with the proposed changes to the nomination and voting process under Section 8A i.e. nominated candidates must provide additional information and parties wishing to vote must confirm their Voting Group to the Code Administrator in advance?</b>	The governance review could be an appropriate route to agree changes to these processes and what additional information would be required.

## CUSC Workgroup Consultation Response Proforma

### CMP285 'CUSC Governance Reform – Levelling the Playing Field'

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **10 September 2018** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com). Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Shazia Akhtar at [Shazia.akhtar2@nationalgrid.com](mailto:Shazia.akhtar2@nationalgrid.com)

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>Kathryn Coffin, <a href="mailto:kathryn.coffin@elexon.co.uk">kathryn.coffin@elexon.co.uk</a>, 020 7380 4030 Claire Kerr, <a href="mailto:claire.kerr@elexon.co.uk">claire.kerr@elexon.co.uk</a>, 020 7380 4293</i>
<b>Company Name:</b>	<i>ELEXON Ltd</i>
Please express your views regarding the Workgroup Consultation, including rationale.  (Please include any issues, suggestions or queries)	For reference, the Applicable Standard CUSC objectives are:  (a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;  (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;  (c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and  (d) Promoting efficiency in the implementation and administration of the CUSC arrangements.  *Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

## Standard Workgroup consultation questions

Q	Question	Response
1	<p><b>Do you believe that CMP285 Original proposal, better facilitates the Applicable CUSC Objectives?</b></p>	<p>Yes, overall, but with reservations.</p> <p>We note that CMP285 seeks to enhance the independence and diversity of CUSC Panel members and ensure wider engagement from CUSC signatories. We agree that, overall, CMP285 will better facilitate the achievement of Applicable CUSC Objectives (b) and (d) by increasing the diversity and transparency of the CUSC Panel's constitution. However, we have some comments and concerns on specific aspects of the proposed solution. While we are not raising a Workgroup Consultation Alternative Request, we invite the Workgroup to consider whether to progress a Workgroup Alternative CUSC Modification in these areas.</p> <p>We give our views on each key aspect of CMP285 below. Our answers to Questions 5-13 provide more detail on these views. To add more context to our response, we also include a table (Attachment A) showing the key similarities and differences between the BSC, current CUSC and CMP285 Panel arrangements.</p> <p>Although the Proposer argues that CMP285 will increase engagement in CUSC Panel elections, we believe this has not been demonstrated and offer our further thoughts on this in our answer to Question 3.</p> <p><b><u>Election voting mechanism</u></b></p> <p>We note that the current voting mechanism for the CUSC Panel elections allows each individual CUSC signatory to cast one vote. We note that this results in larger corporate Party groups (who have multiple signatories) holding significantly more votes than smaller, single-signatory Parties. We agree that this voting design does not help promote a Panel constitution that is representative of the diverse electricity industry as a whole.</p> <p>We agree that, by capping the maximum number of votes per affiliated Party Voting Group to four, CMP285 will better facilitate the achievement of Applicable CUSC Objectives (b) and (d) compared with the current mechanism. However, it will still result in a larger Voting Group of affiliated CUSC signatories holding up to four times as many votes as a single-signatory or single-role Party. We believe that it therefore does not fully address the defect identified by CMP285, since the proposal states that 'It is unacceptable for any part of the industry to have a greater ability to select [Panel] members relative to other</p>



Q	Question	Response
		<p>industry parties’.</p> <p>We note that the BSC Panel Election rules deliver a level playing field by giving a small, non-vertically integrated Party an equal number of votes to a large, affiliated Trading Party Group. We believe that the BSC therefore goes further to promote a diverse Panel constitution and are unclear why the CMP285 Workgroup has ruled out adopting the same principle for the CUSC.</p> <p><b><u>Independent members</u></b></p> <p>We note that CMP285 will add two appointed, independent members to the CUSC Panel. As it will in parallel reduce the number of elected Users’ Panel Members from seven to five, it is difficult to say whether this will increase the CUSC Panel’s overall diversity in practice – since the total number of members will remain the same.</p> <p>However, we believe that the addition of the independent members is, in principle, a positive step forward that will better facilitate the achievement of Applicable CUSC Objective (d). The industry-elected BSC and CUSC Panel Members are already required to act impartially and not represent any particular interests. However, we believe that the BSC Panel’s Independent Members increase its diversity of background and perspectives by bringing a valued breadth of experience and insight.</p> <p>We also note that CMP285’s proposed split in numbers between the five industry-elected members, and the two appointed independent members, is the same as under the BSC.</p> <p><b><u>Terms served</u></b></p> <p>We note that CMP285 limits CUSC Panel Members to serving two consecutive terms at a time (although this will not apply retrospectively). We note that the Proposer believes this will increase the likelihood of securing wider views and backgrounds on the CUSC Panel and build a wider base of industry expertise year-on-year, by developing a wider group of individuals with experience of serving on the Panel. However, we believe that the Proposer and Workgroup have not demonstrated that this would occur, and therefore that this aspect of the proposal would better facilitate the achievement of the Applicable CUSC Objectives.</p> <p>In theory, limiting terms served could promote diversity in Panel election candidates if it encourages candidates from other organisations. However, there is no evidence to</p>

Q	Question	Response
		<p>suggest this would occur. As the restriction is on the individual (not their employer), it could simply result in different individuals standing from the same companies. There is also a risk that it reduces the number of potential candidates, which historically has not been large. Finally, it would limit the Panel's ability to benefit from the valuable continuity of experience provided by long-term members. We note that the BSC does not restrict the number of two-year terms that Panel Members can serve – enabling the Panel (and industry) to benefit from this continuity.</p> <p><b><u>Alternates</u></b></p> <p>We note the new rules proposed by CMP285 regarding the use of Panel Alternates. We are unconvinced that these are more efficient than the existing arrangements, since they could create an administrative burden for the Panel Chairman and Secretary in deciding which elected Alternate to appoint for an absent member.</p> <p>In theory, the use of the proposed experience/rota system could help keep all elected Alternates engaged in Panel business. However we note that this, like the current CUSC rules, relies on there being a sufficient number of unsuccessful election candidates to form an available 'pool' of Alternates. This has not always been the case in past CUSC Panel elections and CMP285 could reduce the number of Alternates further by restricting the number of terms they can serve.</p> <p>We therefore believe that the Proposer and Workgroup have not demonstrated that this aspect of CMP285 would better facilitate the achievement of the Applicable CUSC Objectives.</p> <p><b><u>Publication of election results</u></b></p> <p>We note that the CUSC does not currently require the publication of any election results beyond the names of the new Panel Members/Alternates. We agree that, by requiring publication of the number of votes cast for each candidate, CMP285 will increase the transparency of CUSC Panel election results in line with the existing transparency of the BSC. Increasing the visibility of the potential for their votes to influence results may also encourage Parties' engagement in the election process.</p> <p>We therefore agree that this aspect of CMP285 will better facilitate achievement of Applicable CUSC Objective (d).</p>

Q	Question	Response
2	<b>Do you support the proposed implementation approach?</b>	<p>Yes, on the basis that (if CMP285 is approved) this allows implementation in time for the next CUSC Panel election in mid-2019.</p> <p>We note that a year has elapsed since CMP285 was raised. We would therefore not wish to see implementation of any benefits delayed until the subsequent 2021 election.</p>
3	<b>Do you have any other comments?</b>	<p>Yes, see below.</p> <p><b><u>Engagement in code panel elections</u></b></p> <p>We note the statistics provided by the Proposer (obtained under a Freedom of Information Request) on the low number of candidates for, and turnout in, past CUSC Panel elections.</p> <p>The Proposer believes that CMP285 will increase the number/diversity of election candidates and increase voter turnout among small Parties. We note that the Workgroup has not presented any evidence for or against this view, despite being tasked with demonstrating this as part of its Terms of Reference.</p> <p>We would advise that, although the BSC arrangements already exhibit many of the features proposed by CMP285, BSC Parties' engagement in Panel Elections is also low. In the latest 2018 election, eight candidates were nominated for five Industry Member seats. Of these candidates, one subsequently withdrew due to conflicting work priorities, meaning seven were put forward for election. Three of these seven candidates were existing Industry Members standing for re-election. The turnout amongst those Trading Party Groups eligible to vote was approximately 20%.</p> <p>For the same five Industry Member positions, there were six candidates in both the 2016 and 2014 elections. In the 2012 election, only five candidates were nominated and so were elected without a voting process. In 2010 there were eight candidates, though one subsequently withdrew. Between 2010-2018, two Industry Members served four consecutive two-year terms, two Industry Members served three consecutive two-year terms and one served two consecutive two-year terms. You can find more information at: <a href="https://www.elexon.co.uk/group/the-panel/bsc-panel-elections/">https://www.elexon.co.uk/group/the-panel/bsc-panel-elections/</a>.</p> <p>The BSC's own candidate/turnout figures are therefore broadly comparable to those under the CUSC. We have observed that the BSC turnout amongst small Parties does vary between elections, possibly due to differences in the candidates standing in a given election and/or the</p>

Q	Question	Response
		<p>candidates' engagement with voting Parties.</p> <p>We consider that the reasons for low engagement in code panel elections are likely to be complex, may not be directly related to Panel constitution, and may therefore not be solved by CMP285. We believe that many small Parties rarely engage directly in the industry codes, if at all – though some may engage indirectly through trade associations and consultancies. This is likely to be due to lack of time and resources and, we suggest, the sheer variety of codes, panels and change processes to contend with. We therefore continue to argue for greater alignment between, and consolidation of, industry codes, code bodies and code objectives. We would also encourage Ofgem to provide its view on the optimum Panel constitution among the many existing models, to encourage convergence in governance arrangements.</p> <p>For CMP285, we note the Proposer's desire to learn any lessons from the governance of other industry codes, such as the BSC. We also note the similarities between the BSC and CUSC Panels' existing governance arrangements (as outlined in Attachment A), and that CMP285 seeks to increase these similarities. We therefore encourage the Workgroup to minimise any unnecessary differences between the two in the detail of the CMP285 solution.</p> <p><b><u>Panel governance and operating practices</u></b></p> <p>We believe that a Panel's constitution is not the only factor in determining whether it is perceived to act with integrity, with independence from vested interests, and in the furtherance of the code's Applicable Objectives and the best outcome for consumers. The perceived credibility of, and Parties' confidence in, the Panel also depends on its operation, conduct, and openness – for example in the transparency of, and provision of justification for, its decisions. The robustness of its decisions also depends on the quality of papers and analysis provided by the code administrator, the code administrators' role as 'critical friend' in ensuring that all industry views are included/ presented, and the independent Chairman providing constructive challenge and ensuring that all views are considered.</p> <p>We note that the Proposer's original suggestion of an</p>

Q	Question	Response
		<p>independent review of CUSC Panel governance, similar to the 2013 Knight review of BSC governance<sup>1</sup>, appears not to have been progressed under CMP285. The Knight review focused on the governance of BSCCo (ELEXON), especially the relationship between ELEXON, its Board and the Panel. In light of the Knight report's findings, the BSC Panel undertook a detailed review of its own governance during 2014/15. The output was a variety of Panel thought pieces on its responsibilities and operating practices, which you can find here: <a href="https://www.elexon.co.uk/group/the-panel/panel-strategy-governance/">https://www.elexon.co.uk/group/the-panel/panel-strategy-governance/</a>. We note that the CUSC Panel could undertake a similar exercise, regardless of whether it is required to do so by CMP285.</p> <p><b>Deputy Panel Chairman</b></p> <p>Currently, the independent CUSC Panel Chairman can appoint a senior employee of National Grid to act as their alternate in the event of their unavailability for a meeting. Under the BSC, and after consultation with Ofgem, the independent Panel Chairman may appoint one of the Independent Members to act as the Deputy Panel Chairman. We believe that the BSC arrangements better promote perceptions of independence in Panel chairmanship and should therefore be adopted under CMP285, in parallel with the introduction of the independent CUSC Panel members.</p> <p><b>National Grid Panel members</b></p> <p>We note that the CUSC Panel's constitution includes 'two persons appointed by The Company' (currently National Grid Electricity Transmission, NGET). These National Grid Panel members can cast one joint vote between them on all CUSC Panel decisions, including on CUSC Modifications.</p> <p>We note that CMP285 does not propose to change the arrangements for National Grid Panel members. However, we understand that CMP293 and CMP294 will separately modify the CUSC to reflect the creation of a new National Grid Electricity System Operator (NGESO) that is legally separated from NGET Limited. We note that, under CMPs 293/294, 'The Company' will now be defined as the new NGESO. This means that the NGESO will have two Panel members with one combined vote. It is unclear if the CMP285 Workgroup has considered whether this is</p>

<sup>1</sup> The Knight report is available at: <https://www.elexon.co.uk/about/who-we-are/elexon-governance-financial-reports/>.

Q	Question	Response
		<p>appropriate for the role of the NGESO.</p> <p>We do not believe that National Grid Panel Members should be able to vote at the CUSC Panel at all. We do not believe it to be appropriate for National Grid, as the Party responsible for implementing such changes, to have the ability to be a part of the decision-making process for these changes. Under the BSC, the Transmission Company Representative is not able to vote on Modifications business. We believe that this approach should also be adopted under the CUSC. Under the BSC, the Transmission Company Representative is able to openly provide their views for discussion but is not able to advocate a vote. There has been no issue with this to date and as such, we propose that this same approach is taken by the CUSC Panel.</p> <p>Similarly, CMPs 293 and 294 will result in a senior employee of the NGESO fulfilling the role of alternate CUSC Panel Chairman, unless CMP285 introduces different provisions for a Deputy Panel Chairman. We believe that the Deputy Panel Chairman should also be independent and not an employee of National Grid.</p>
4	<p><b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b></p>	<p>No. However, we invite the Workgroup to consider our comments/concerns on specific aspects of CMP285 and decide whether to progress a Workgroup Alternative CUSC Modification in these areas.</p>

#### Specific questions for CMP285

Q	Question	Response
5	<p><b>Do you think the draft legal text delivers the intent of the revised Proposal?</b></p>	<p>Yes, mostly. However, in preparing our response we have spotted some inconsistencies between the solution described in the Workgroup's consultation document and the detail of the legal text. For example:</p> <ul style="list-style-type: none"> <li>• The consultation document refers to grouping 'affiliated' CUSC Parties using definitions of different tiers of subsidiaries. The legal text instead matches the BSC's own definition of 'Affiliate', which we agree is clearer.</li> <li>• The consultation document refers to independent Panel members' remuneration arrangements being in the legal text, but we could not find these provisions.</li> <li>• The consultation document refers to Panel Members</li> </ul>

Q	Question	Response
		<p>providing five Working Days' notice of planned absence for a meeting, but the legal text says three Working Days.</p> <p>We suggest that the Workgroup therefore undertakes a further consistency review.</p>
6	<p><b>As per the revised Proposal, do you believe that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC panel elections?</b></p>	<p>Yes and no.</p> <p>We agree with the proposal to use voting groups to avoid the risk of larger corporate Party groups (i.e. Parties with multiple CUSC signatories) dominating the election outcome by exercising the majority of votes.</p> <p>However, we note that the CMP285 Modification Proposal states that 'It is unacceptable for any part of the industry to have a greater ability to select [Panel] members relative to other industry parties'. We consider that the proposed solution does not fully address this issue as it still leaves larger Voting Groups of affiliated CUSC signatories holding up to four times as many votes as a single-signatory or single-role Party.</p> <p>We therefore do not agree that introducing the proposed four voting roles fully addresses the defect identified by CMP285.</p> <p>See also our answer to Question 1 above.</p>
7	<p><b>Do you have any alternative suggestions on how to ensure that some parent companies of CUSC parties are not able to potentially exercise overwhelming control over cumulative CUSC panel votes?</b></p>	<p>Yes.</p> <p>We are unclear why the Workgroup has ruled out adopting the BSC's principle of a level playing field – under which the BSC gives a small, non-vertically integrated Party an equal number of votes to a large, affiliated Trading Party Group. We believe that the BSC approach goes further to achieving a diverse Panel constitution.</p> <p>See also our answer to Question 1 above.</p>
8	<p><b>As per the revised Proposal, do you support an independent model i.e. two independent (and salaried) panel members to join the remaining five user elected panel members?</b></p>	<p>Yes, we agree that this will, in principle, increase the diversity of the Panel for the reasons given in our answer to Question 1.</p> <p>However, we are unsure why the legal text refers to National Grid appointing the independent members (albeit with Ofgem's approval). Under the BSC, the independent Panel Chairman appoints the Independent Members. We believe that this goes further to promote perceptions of independence and we therefore suggest that the CUSC follows the same principle.</p> <p>We note that the CMP285 Workgroup has construed the BSC's definition of 'independent' member as meaning no energy industry experience. While the BSC's Independent Members often bring valuable insight from other industries or academia, it is not necessarily the case that they lack energy industry knowledge. Both of the current Independent Members on the BSC Panel have energy industry experience (you can</p>

Q	Question	Response
		<p>find their career details on our website at <a href="https://www.elexon.co.uk/group/the-panel/group-members/">https://www.elexon.co.uk/group/the-panel/group-members/</a>).</p> <p>The BSC simply requires that Independent Members have not been employed by a BSC Party or participated in a licensable BSC activity in the year preceding their appointment. The BSC and proposed CUSC definitions of 'independent' member therefore appear to have similar practical effect.</p>
9	<p><b>As per the revised Proposal, do you believe that the independent panel members should be remunerated for their services and do you believe the proposed remuneration arrangements are appropriate?</b></p>	<p>Yes, with some reservations as set out below.</p> <p>The proposed remuneration arrangements set out in the consultation document seem similar to those under the BSC. However, we could find no reference to them in the CMP285 legal text. Is this an oversight, as the consultation document refers to arrangements specified in the legal drafting?</p> <p>The only significant differences between the BSC and proposed CUSC arrangements appear to be that:</p> <ul style="list-style-type: none"> <li>• ELEXON is required to publish its remuneration to independent Panel members while National Grid is not. We see no reason why National Grid should not also be required to publish this for transparency.</li> <li>• CMP285 appears to give National Grid discretion to determine the remuneration provided to independent Panel members. The BSC's remuneration for Independent Members is determined by the Panel Chairman in consultation with the Panel. We see no obvious reason for the difference in approach and believe that the BSC's approach is more transparent.</li> </ul>
10	<p><b>As per the revised Proposal, do you agree that the consecutive terms of office of panel members should be time limited? If so, is the proposed two consecutive term limit (i.e. four years before a panel member would have to take a one term break before standing for election again) appropriate?</b></p>	<p>No, for the reasons given in our answer to Question 1.</p> <p>We are also unclear from the legal text on how the restriction works in practice, since it applies to both Panel Members and Panel Alternates. If an individual serves one term as a Member and then a following term as an Alternate (or vice versa), does this count as two consecutive terms served such that the restriction applies? If an Alternate was never called to attend the Panel during a term, does this still count as a term served even though they never attended a meeting?</p>
11	<p><b>Do you believe there is a need to build greater knowledge and experience of CUSC matters across the industry? If so, does the revised Proposal help</b></p>	<p>Yes and no.</p> <p>As per our answer to Question 3, we remain unconvinced that changing the CUSC Panel's constitution will directly increase the numbers of candidates for, and votes cast, in Panel elections.</p>



Q	Question	Response
	<p><b>to share the knowledge and experience by ensuring a wider range of individuals sit on the panel over time?</b></p>	<p>While greater engagement from smaller Parties in code governance is extremely desirable (not just in Panel elections, but also in code change processes), the difficulties in achieving this are not limited to the CUSC but affect all Industry Codes. Participating in electricity industry governance requires engagement with multiple complex codes, each with its own Panel and change process. We believe it is unrealistic to expect most small Parties to be able to field candidates for code Panels. Small Parties may also simply lack the time and resources to gain the understanding needed to participate in multiple codes. We therefore continue to argue that the long-term solution to this issue is convergence/consolidation of codes, code bodies and code objectives. In the short-term, we believe that each code's Panel and code administrator have roles to play in making their processes as transparent, accessible and accountable as possible to all Parties – regardless of the Panel's specific constitution.</p>
12	<p><b>As per the revised Proposal, do you agree with the suggested use of panel alternates whereby panel members would no longer be able to select an alternate in their absence and alternates would instead be allocated on the basis of being selected by the chair, or being next of a rota?</b></p>	<p>No, for the reasons given in our answer to Question 1.</p>
13	<p><b>As per the revised Proposal, do you agree with the proposed changes to the nomination and voting process under Section 8A i.e. nominated candidates must provide additional information and parties wishing to vote must confirm their Voting Group to the Code Administrator in advance?</b></p>	<p>Yes and no.</p> <p>The requirement for CUSC Parties to confirm the validity of their Voting Group appears similar to the BSC.</p> <p>However, the proposed CMP285 legal text appears to prevent a Voting Group from receiving voting papers and exercising any vote unless it has confirmed to National Grid, in advance, which of the Parties in its group it designates to receive and submit papers. This is different to the BSC arrangements, where ELEXON sends voting papers to every individual Trading Party, but only one Party in a Trading Party Group may vote and the Trading Party Group is responsible for determining which.</p> <p>By including an extra administrative hurdle on the ability to receive voting papers, the CMP285 rules could be seen as a barrier to voting. The BSC rules do not create this barrier and so we suggest that CMP285 adopts the BSC's approach.</p>

## COMPARISON OF BSC/CUSC PANEL GOVERNANCE

Feature	BSC	CUSC (current)	CUSC (CMP285 legal text)
Independent Panel Chairman	Yes – approved by Ofgem	Yes – approved by Ofgem	Yes – no changes proposed to current rules
Deputy Panel Chairman	Yes <ul style="list-style-type: none"> <li>One of the Panel’s Independent Members</li> <li>Appointed by the independent Panel Chairman in consultation with Ofgem</li> </ul>	Yes <ul style="list-style-type: none"> <li>A senior National Grid employee</li> <li>Appointed by the independent Panel Chairman</li> </ul>	Yes – no changes proposed to current rules
Elected Panel Members	Yes, up to 5 Industry Panel Members <ul style="list-style-type: none"> <li>Any BSC Trading Party can nominate a candidate</li> <li>Elected by Trading Parties through series of preference votes / voting rounds</li> <li>Affiliated Trading Parties grouped into a single Trading Party Group</li> <li>‘Affiliated’ means any holding company, subsidiary, or subsidiary of a holding company of a Party</li> <li>Each Trading Party Group gets 2 votes</li> <li>All Trading Parties sent voting papers, but only 1 in a Trading Party Group may vote</li> <li>All Parties therefore have an equal number of votes (i.e. all voting Parties get 2 votes) regardless of market share or the number of signatories in their corporate group</li> </ul>	Yes, up to 7 Users’ Panel Members <ul style="list-style-type: none"> <li>Any CUSC Party can nominate a candidate</li> <li>Elected by CUSC Parties through series of preference votes / voting rounds</li> <li>Each CUSC signatory gets 1 vote – Parties with multiple signatories in their corporate group therefore get as many votes as they have signatories</li> </ul>	Yes, up to 5 Users’ Panel Members (so 2 less than now) <ul style="list-style-type: none"> <li>Any CUSC Party can nominate a candidate</li> <li>Elected by CUSC Parties through series of preference votes / voting rounds</li> <li>Affiliated signatories grouped into a single Voting Group</li> <li>‘Affiliated’ means any holding company, subsidiary, or subsidiary of a holding company of a Party</li> <li>Each Voting Group gets up to 4 votes – 1 for each of the following roles held by signatories in its group: Generation, Interconnector, Supply and Demand</li> <li>Voting Group must decide which of its signatories will vote and only that Party is sent voting papers</li> <li>Voting Groups performing multiple roles can therefore still cast more votes than a single-role Party, though number of votes now capped</li> </ul>

## COMPARISON OF BSC/CUSC PANEL GOVERNANCE

Feature	BSC	CUSC (current)	CUSC (CMP285 legal text)
Independent Panel Members	<p>Yes, up to 2</p> <ul style="list-style-type: none"> <li>Appointed by the independent Panel Chairman</li> <li>'Independent' means, during the year before appointment: not employed by a BSC Party and not participating in electricity generation, transmission, distribution or supply under licence or exemption</li> <li>Remunerated by ELEXON</li> <li>Remuneration published in Annual BSC Report</li> </ul>	No	<p>Yes, up to 2</p> <ul style="list-style-type: none"> <li>Appointed by National Grid, approved by Ofgem</li> <li>National Grid must ensure they reflect interests not otherwise represented in Panel's composition</li> <li>'Independent' means not currently employed by a CUSC Party or having any shares in a CUSC Party exceeding £10k (energy industry experience is still required)</li> <li>Remunerated by National Grid</li> <li>Remuneration not required to be published</li> </ul>
Consumer Panel Members	<p>Yes, currently 2</p> <ul style="list-style-type: none"> <li>Appointed by Citizens Advice</li> </ul>	<p>Yes, 1</p> <ul style="list-style-type: none"> <li>Appointed by Citizens Advice</li> </ul>	Yes – no changes proposed to current rules
Transmission Company Panel Members	<p>Yes, 1</p> <ul style="list-style-type: none"> <li>Appointed by National Grid</li> <li>Can't vote on Modifications</li> </ul>	<p>Yes, up to 2</p> <ul style="list-style-type: none"> <li>Appointed by National Grid</li> <li>Share one vote</li> <li>Can vote on Modifications</li> </ul>	Yes – no changes proposed to current rules
Further appointed Panel Member	<p>Yes, 1 further Industry Panel Member</p> <ul style="list-style-type: none"> <li>Can be appointed by the independent Panel Chairman to reflect interests not otherwise represented in Panel's composition</li> </ul>	<p>Yes, 1 further Panel Member</p> <ul style="list-style-type: none"> <li>Can be appointed by Ofgem to reflect interests not otherwise represented in Panel's composition (though this ability hasn't been exercised in practice)</li> </ul>	Yes – no changes proposed to current rules

## COMPARISON OF BSC/CUSC PANEL GOVERNANCE

Feature	BSC	CUSC (current)	CUSC (CMP285 legal text)
Term of office	2 years <ul style="list-style-type: none"> <li>No limit on terms served</li> </ul>	2 years <ul style="list-style-type: none"> <li>No limit on terms served</li> </ul>	2 years <ul style="list-style-type: none"> <li>Limited to 2 consecutive terms (but doesn't apply retrospectively)</li> </ul>
Members required to act impartially	Yes	Yes	Yes – no changes proposed to current rules
Use of Alternates	Appointed by individual Panel Members as required	<ul style="list-style-type: none"> <li>Up to 5 elected Panel Alternates, representing the unsuccessful election candidates with the most votes</li> <li>Form a 'pool' of available alternates</li> <li>Users' Panel Members may appoint any of these Alternate Members, or another Panel Member if no Alternates are available, as their alternate for a meeting</li> <li>Other Panel Members can appoint any individual as their alternate</li> </ul>	<ul style="list-style-type: none"> <li>No changes to election of Panel Alternates</li> <li>Elected Panel Alternates can act as alternate for Users' Panel Members and Independent Members</li> <li>Panel Chairman appoints one of the Panel Alternates to be an absent Users'/ Independent Member's alternate, based on relevant experience for the meeting business or (if no difference) the Panel Secretary appoints one of the Panel Alternates using a rota</li> <li>No changes to other Panel Members' ability to appoint their own alternates</li> <li>Panel Members must use reasonable endeavours to give Panel Secretary 3WD notice of planned absence or, in the case of illness, by 07:00 on the day of the meeting</li> </ul>

## COMPARISON OF BSC/CUSC PANEL GOVERNANCE

Feature	BSC	CUSC (current)	CUSC (CMP285 legal text)
Election results published	Yes, including: <ul style="list-style-type: none"><li>• Outcome of election</li><li>• Number of valid voting papers received</li><li>• Number of votes for each candidate in each voting round</li></ul>	Yes: <ul style="list-style-type: none"><li>• Outcome of election only</li></ul>	Yes, including: <ul style="list-style-type: none"><li>• Outcome of election</li><li>• Number of voting papers issued</li><li>• Number of voting papers received</li><li>• Number of votes for each candidate in each voting round</li></ul>

## CUSC Workgroup Consultation Response Proforma

### CMP285 'CUSC Governance Reform – Levelling the Playing Field'

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **10 September 2018** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Shazia Akhtar at [Shazia.akhtar2@nationalgrid.com](mailto:Shazia.akhtar2@nationalgrid.com)

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>Mike Oxenham</i>
<b>Company Name:</b>	<i>National Grid Electricity Transmission (ESO)</i>
Please express your views regarding the Workgroup Consultation, including rationale.  (Please include any issues, suggestions or queries)	<p>We are generally supportive of the intent of the Proposal, the amended Proposal itself and how the Proposal is to be implemented but we believe that further work is required to i) ensure that the burden on the Code Administrator remains proportionate, and ii) that the risk of not having adequate numbers and/or experience on the Panel in future as a result of the limit on panel member tenure is suitably mitigated.</p> <p>We expect that at a minimum this Proposal (as it stands) will further Applicable Standard CUSC Objectives (a) and (d) due to the removal of actual and/or perceived barriers in the process and the expected increase in the engagement of both smaller parties and newer entrants in the panel election process and resulting panel composition.</p> <p>This will then provide more diversity in the panel experience (also due to the introduction of independent panel members) and this should therefore lead to more efficient outcomes.</p>

### Standard Workgroup consultation questions

Q	Question	Response
1	<b>Do you believe that CMP285 Original proposal, better facilitates the Applicable CUSC Objectives?</b>	We have some minor concerns which require consideration but generally we believe the amended Proposal better facilitates the Applicable Standard CUSC Objectives.
2	<b>Do you support the proposed implementation approach?</b>	Yes and whilst it is important the changes to panel tenure (noting our concerns on tenure) are prospective the risk introduced by having the two consecutive term period apply to all panel members from implementation should be further considered i.e. the third election from the date of implementation could result in all panel members being excluded from the election process.
3	<b>Do you have any other comments?</b>	We have no further comments at this stage.
4	<b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b>	No.

### Specific questions for CMP285

Q	Question	Response
5	<b>Do you think the draft legal text delivers the intent of the revised Proposal?</b>	The draft legal text appears to deliver the intent of the Proposal although there are a couple of areas which might require further consideration. More specifically, 8.3.4(e) and 8A.4.5 may possibly require further attention to confirm they are aligned with the intent of the Proposal.
6	<b>As per the revised Proposal, do you believe that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC panel elections?</b>	<p>As we do not participate in the election process ourselves our ultimate views on this question will be informed by what is fair and proportionate and this view will be informed by consultation responses and the views of our stakeholders.</p> <p>At this stage we generally believe that the panel election process will be fairer and more proportionate if there is a cap on the number of votes available to a controlling parent company – the proposed approach seems sensible but we acknowledge there could be other options suggested which need to be considered by the Work Group.</p>

Q	Question	Response
7	<p><b>Do you have any alternative suggestions on how to ensure that some parent companies of CUSC parties are not able to potentially exercise overwhelming control over cumulative CUSC panel votes?</b></p>	<p>No.</p>
8	<p><b>As per the revised Proposal, do you support an independent model i.e. two independent (and salaried) panel members to join the remaining five user elected panel members?</b></p>	<p>Yes. We believe this will increase diversity of experience and views in panel discussions and that this should in turn improve outcomes.</p> <p>We note that the amended Proposal currently provides for the appointment of the Independent Panel Members by The Company (after having consulted the Panel) with the final approval by Ofgem – we agree with this approach but would note that the funding implications of this change in the medium to long term will need to be further considered.</p>
9	<p><b>As per the revised Proposal, do you believe that the independent panel members should be remunerated for their services and do you believe the proposed remuneration arrangements are appropriate?</b></p>	<p>Yes - we think it unlikely that Independent Panel Members could be sourced without remuneration.</p> <p>We also believe that the appropriate level of remuneration should be at our discretion, at least in the short-term, as per the draft legal text for the Proposal.</p>
10	<p><b>As per the revised Proposal, do you agree that the consecutive terms of office of panel members should be time limited? If so, is the proposed two consecutive term limit (i.e. four years before a panel member would have to take a one term break before standing for election again) appropriate?</b></p>	<p>We have some reservations about the two term limit from a risk perspective i.e. in the event there are not enough interested candidates once time barred members are removed should there be a mechanism to allow those time barred members to stand for a third consecutive term?</p> <p>This provides the opportunity for additional panel diversity (as per the understood intent of the Proposal) but the risk of loss of sufficient panel numbers is then reduced.</p>



Q	Question	Response
11	<p><b>Do you believe there is a need to build greater knowledge and experience of CUSC matters across the industry? If so, does the revised Proposal help to share the knowledge and experience by ensuring a wider range of individuals sit on the panel over time?</b></p>	<p>We believe there is a need to build greater knowledge and experience of CUSC matters across industry but whilst there will be some benefits here we do not believe this Proposal materially addresses the issue.</p> <p>However, this does not detract from the other merits of the Proposal.</p>
12	<p><b>As per the revised Proposal, do you agree with the suggested use of panel alternates whereby panel members would no longer be able to select an alternate in their absence and alternates would instead be allocated on the basis of being selected by the chair, or being next of a rota?</b></p>	<p>Yes.</p> <p>This will allow a more considered selection of the alternate i.e. if the Chair feels a particular alternate will better contribute to the debate on a particular topic then they can select on that basis and if they choose not to do so (e.g. if each alternate is equally experienced on a given topic) then the process of alternate selection is more transparent than under the current approach to alternate selection.</p>
13	<p><b>As per the revised Proposal, do you agree with the proposed changes to the nomination and voting process under Section 8A i.e. nominated candidates must provide additional information and parties wishing to vote must confirm their Voting Group to the Code Administrator in advance?</b></p>	<p>Whilst we believe that certain elements of the changes to Section 8A (as a result of the Proposal) will improve transparency and efficiency (i.e. the additional information being published in respect of the process, and changes to the voting process) we have reservations whether the additional transparency in relation to the financial interests of panel members will be proportionate to the additional burden on panel members and the code administrator when collating, publishing and maintaining the information.</p> <p>We suggest further consideration on whether the balance between transparency and efficiency is right in this regard.</p>

Apologies that this isn't in the preferred format, but I would very much like to give my views on this to the workgroup and include some key points below:

- As a renewable developer (innogy Renewables UK Ltd) and Supplier (npower) with a large parent company, even we find engaging with CUSC challenging. Especially at the moment when there are so many modification proposals live and planned – largely as a result of the Capacity Market. As large, conventional generators and smaller, distribution connected generators able to participate in the CM do battle by proposing modifications which try to tip the scales in favour of different classes of CM generators renewable developers are caught in the crossfire – whether they are owned by large parent companies or small, independent companies.
- The above point highlights a flaw with the current open governance processes. This is definitely related to the composition of the CUSC panel (in our view) but it also goes far beyond that. Open governance is a process we enjoy as CUSC parties to be able to identify defects in Code and rectify them. On paper it is great. But when the process gets out of control, as it currently (arguably) is, it becomes unwieldy for any but the largest generators with resource and time to throw at the battle I refer to in my first bullet point.
- All this creates significant distortion, something which Ofgem should be concerning themselves with. Smaller generators cannot keep up with current open governance processes due to sheer time and resource restrictions – not lack of knowledge. This is often a split which manifests itself as large, fossil-fuelled generators taking part whilst smaller, renewable/low-carbon generators are unable to do so.
- The current TCR / Access and Forward Looking Charges work led by Ofgem is clearly showing that final demand customers also wish to be involved in the discussions. This is demonstrated by the list of CFF attendees, but we note that these final demand customers / their representatives are not generally involved in CUSC modifications.
- Innogy and npower would be very supportive of changes made to open governance which allow all types of CUSC parties and customers' representatives to participate more broadly in open governance. National Grid could put together some statistics very easily to compare the size of portfolio of workgroup members' employers to the number of workgroup meetings individuals have attended in the last 2 years (arbitrary timescale, given as an example). The results would show that very large portfolios attend where smaller portfolios do not. Further analysis would reveal that generators whose main interests are renewable/low-carbon technologies are extremely under-represented despite being the technologies which are growing rather than slowing.
- We would support a shake-up of the CUSC panel to ensure that a more diverse set of experience is there. That includes having explicit smaller company representation – not just DG experience from diesel gensets owned by large incumbents. We consider that a representative from Suppliers and a customer group representative (eg Citizen's Advice) should also have seats to represent the interests of final demand customers. We do also support retaining experience from those who have been in the

industry a long time – that could even be in an advisory capacity only when their tenure has expired. However, as a more diverse CUSC panel could offer broader experience that should not to be seen as a ‘downgrade’ from the current panel composition.

Many thanks,

**Nicola Percival | Policy & Regulations Manager**

Markets & Regulatory Affairs | Innogy Renewables UK Limited

### CMP285 'CUSC Governance Reform – Levelling the Playing Field'

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **10 September 2018** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Shazia Akhtar at [Shazia.akhtar2@nationalgrid.com](mailto:Shazia.akhtar2@nationalgrid.com)

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>Graham Pannell</i> <i>graham.pannell@res-group.com</i>
<b>Company Name:</b>	<i>RES UK &amp; Ireland Limited</i>
Please express your views regarding the Workgroup Consultation, including rationale.  (Please include any issues, suggestions or queries)	<p>For reference, the Applicable Standard CUSC objectives are:</p> <p>(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;</p> <p>(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;</p> <p>(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and</p> <p>(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.</p> <p>*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).</p>

## Standard Workgroup consultation questions

Q	Question	Response
1	Do you believe that CMP285 Original proposal, better facilitates the Applicable CUSC Objectives?	Yes
2	Do you support the proposed implementation approach?	Broadly, Yes.
3	Do you have any other comments?	We are a strong supporter of a more widely representative CUSC Panel. We are very supportive of greater transparency in any CUSC process.
4	Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?	No.

## Specific questions for CMP285

Q	Question	Response
5	Do you think the draft legal text delivers the intent of the revised Proposal?	<i>Insofar as it reflects the substance of the proposal, yes.</i>
6	As per the revised Proposal, do you believe that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC panel elections?	We agree with the vote cap per parent company and with the initial cap of four votes. We do <i>not</i> agree that each vote must be from one of the distinct roles set out on page 12: in practice the energy system can be and will become more complex, with more roles emerging in a smart flexible energy system, whereby this specific role list may become unnecessarily restrictive. We think it would be simpler to cap at four per controlling parent company.
7	Do you have any alternative suggestions on how to ensure that some parent companies of CUSC parties are not able to potentially exercise overwhelming control over cumulative CUSC panel votes?	No

Q	Question	Response
8	<p><b>As per the revised Proposal, do you support an independent model i.e. two independent (and salaried) panel members to join the remaining five user elected panel members?</b></p>	<p>Yes.</p>
9	<p><b>As per the revised Proposal, do you believe that the independent panel members should be remunerated for their services and do you believe the proposed remuneration arrangements are appropriate?</b></p>	<p>Yes</p>
10	<p><b>As per the revised Proposal, do you agree that the consecutive terms of office of panel members should be time limited? If so, is the proposed two consecutive term limit (i.e. four years before a panel member would have to take a one term break before standing for election again) appropriate?</b></p>	<p>On balance we are minded to agree.</p>
11	<p><b>Do you believe there is a need to build greater knowledge and experience of CUSC matters across the industry? If so, does the revised Proposal help to share the knowledge and experience by ensuring a wider range of individuals sit on the panel over time?</b></p>	<p>Yes. The proposal partially reduces an existing distortion. It will deliver a wider range of participation.</p>

Q	Question	Response
12	<p><b>As per the revised Proposal, do you agree with the suggested use of panel alternates whereby panel members would no longer be able to select an alternate in their absence and alternates would instead be allocated on the basis of being selected by the chair, or being next of a rota?</b></p>	<p>It is not completely clear from the report but we are assuming that the Chair will be able to exercise a degree of common sense and allow panel members to suggest specific alternates which the Chair can consider on a case-by-case basis. If so, we support this.</p>
13	<p><b>As per the revised Proposal, do you agree with the proposed changes to the nomination and voting process under Section 8A i.e. nominated candidates must provide additional information and parties wishing to vote must confirm their Voting Group to the Code Administrator in advance?</b></p>	<p>As per our response to Q.6, we do <i>not</i> agree that each vote must be from one of the distinct roles set out on page 12. To the extent that this proposal is adopted then the proposed changes would seem appropriate.</p>





# CMP285 Workgroup Consultation Responses

National Grid Code Administrator

25 October 2018

- 12 responses were received to the CMP285 Workgroup Consultation. Responses were received from:
- UKPR
- NGET
- DRAX
- Scottish Power
- EDF Energy
- ELEXON
- RES
- Peakgen
- Citizens Advice
- ENWL
- Green Frog Power
- Innogy (This was a late response to the consultation and was circulated to the Workgroup to consider)

# Q1) Do you believe that CMP285 Original proposal, better facilitates the Applicable CUSC Objectives?

Q1) Do you believe that CMP285 Original proposal, better facilitates the Applicable CUSC Objectives?	Yes	No	Summary
UKPR	X		UKPR believe the current voting process does not allow for sufficient diversity and independence, but changing this will allow several initiatives to increase transparency and fairness of the process. The proposal gives potential for greater diversity of backgrounds.
NGET	X		NGET have some minor comments for consideration, however generally believe that the proposal better facilitates the applicable CUSC objectives.
EDF Energy		X	EDF's view is that the intention of the proposal is supported but the practicality of the original would not better facilitate the applicable objectives. Ofgem have the ability, under the existing arrangements to appoint a Panel member if they believe the appointed Panel members are not representative. However, EDF Energy support the idea that Panel alternate members should be selected by a rota, which the Code Administrator already does.
Drax Power	X		Support the proposal to place the parties into a voting group and limit the number of votes. This will resolve concerns that some Companies have an unfair and disproportionate share of the votes. CMP285 promotes efficiency in the CUSC arrangements.
Scottish Power		X	Scottish Power's view is that the Proposer has not provided sufficient evidence that the current CUSC governance regime is detrimental to competition. The view is that the CUSC Panel has a limited role in the change process (only providing recommendations to Ofgem) Not clear that the original proposal will better facilitate the CUSC objectives.
RES	X		RES believe that the original proposal better facilitates the applicable CUSC objectives.
Citizens Advice	X		Citizens Advice believe the proposal better facilitates applicable CUSC objectives B and D. Justification on why they feel this meets applicable objective b is because it will allow smaller parties access which will level the playing field as it allows for more of an equal say for all CUSC Parties and therefore promotes greater competition. Justification for applicable CUSC objective D is due to the implementation and administration of CUSC arrangements will be improved by greater participation of larger CUSC Parties which should hopefully improve the diversity of views within the process.
ELEXON	X		ELEXON support the overall proposal but have some reservations as detailed in their response.
ENWL	X		Further transparency and diversity would better facilitate the applicable CUSC objective. ENWL believe that it would be more appropriate for a governance review to be instigated to better achieve the aim of the proposal.
Peakgen	x		Peakgen believe that by making the Panel more representative of wider industry views would enhance its decision-making views and improve competition in the market. Improving the CUSC governance may need incremental change and this modification proposal provides a good starting point
Green Frog Power	X		Green Frog Power believe the proposal will have a positive impact on CUSC applicable objective D and objective B as the transparency and non- dominance of the Panel would be improved and provide a level playing field.

## Q2) Do you support the proposed implementation approach?

Q2) Do you support the proposed implementation approach?	Yes	No	Summary
UKPR	X		UKPR consider the proposed implementation approach to be suitable. It is vital that the recommended timeframes outlined in the report are adhered to, to ensure the necessary governance changes are made ahead of the 2019 CUSC Elections.
NGET	X		NGET support the proposed implementation approach and note it is important the changes to the Panel tenure are prospective, the risk introduced by having the two consecutive term period apply to all Panel members from implementation should be further considered.
EDF Energy	X		EDF Energy support the proposed implementation approach.
Drax Power	X		DRAX support the changes being implemented in time to take affect for the 2019 CUSC Panel Elections. DRAX also support the non-retrospective approach whereby all the changes would come into effect without referring to previous years CUSC Panel members.
Scottish Power	X		If the original proposal is implemented it should be implemented in time for the 2019 CUSC Election.
RES	X		RES broadly support the proposed implementation approach.
Citizens Advice	X		Citizens Advice support the proposed implementation approach.
ELEXON	X		ELEXON support the implementation of CMP285. A year has lapsed since this Modification was raised and therefore do not wish for implementation to be delayed until 2021 elections.
ENWL	X		ENWL support the proposed implementation approach, however acknowledged that the timescale for implementation may be difficult to achieve.
Peakgen	X		Peakgen support the proposed implementation approach.
Green Frog Power	X		Green Frog Power believe that anyone who has served two consecutive terms already should not be able to stand for another term.

### Q3) Do you have any other comments?

Q3) Do you have any other comments?	Yes	No	Summary
UKPR		X	UKPR have no further comments.
NGET		X	NGET have no further comments.
EDF Energy	X		Ofgem has not, despite its right, appointed a Panel member because it felt that the elected members were not representative on balance.
Drax Power	X		Drax would support a process where the Chair is nominated by the Panel in consultation with the Company and then approved/rejected by the Authority.
Scottish Power		X	Scottish Power have no further comments.
RES	X		RES strongly support a more widely representative CUSC Panel. They are very supportive of greater transparency in any CUSC process.
Citizens Advice	X		It is important that implementation is achieved in time for the next round of CUSC election in 2019.
ELEXON	X		ELEXON have provided further comments in their response.
ENWL	X		It is essential that all parties are treated as the same including a level playing field when it comes to voting rights under the CUSC.
Peakgen	X		Fixed terms may result in fewer parties willing commit to the time to sit on Panels. Panel members should also recuse themselves from votes on their own modifications. No alternative has been raised on this but something the Workgroup could give further consideration.
Green Frog Power	X		It is not clear if there is intention to limit the terms that alternate members may serve.

## Q4) Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?

Q4) Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?	Yes	No	Summary
UKPR	X		Submitted to the Code Administrator and circulated to the Workgroup.
NGET		X	No Workgroup Consultation Alternative requests for the Workgroup to consider.
EDF Energy		X	No Workgroup Consultation Alternative requests for the Workgroup to consider.
Drax Power		X	No Workgroup Consultation Alternative requests for the Workgroup to consider.
Scottish Power		X	No Workgroup Consultation Alternative requests for the Workgroup to consider.
RES		X	No Workgroup Consultation Alternative requests for the Workgroup to consider.
Citizens Advice		X	No Workgroup Consultation Alternative requests for the Workgroup to consider.
ELEXON		X	ELEXON invite the Workgroup to consider their comments on CMP285 and decide whether to progress a Workgroup Alternative in these areas.
ENWL		X	No Workgroup Consultation Alternative requests for the Workgroup to consider.
Peakgen		X	No Workgroup Consultation Alternative requests for the Workgroup to consider.
Green Frog Power		X	No Workgroup Consultation Alternative requests for the Workgroup to consider.

## Q5) Do you think the draft legal text delivers the intent of the revised Proposal?

Q5) Do you think the draft legal text delivers the intent of the revised Proposal?	Yes	No	Summary
UKPR	X		The legal text is reflective of the Workgroup report and discussions therefore delivers the intent of the proposal.
NGET	X		The draft legal text appears to deliver the intent of the proposal. Further consideration is needed on section 8.3.4 (e) and 8A.4.5 to confirm they are aligned with the proposal.
EDF Energy	X		The draft legal text delivers the intent of the proposal.
Drax Power	X		Yes, however further clarification is needed on some points in the report. Section 4.1(g) and Section 4.1(i).
Scottish Power	X		The draft legal text appears to deliver the intent of the proposal.
RES	X		The draft legal text reflects the substance of the proposal.
Citizens Advice	X		The draft legal text delivers the intent of the revised proposal.
ELEXON	X		There are some inconsistencies between the solution described in the Workgroup's consultation document and the detail of the legal text. The Workgroup should take a further consistency review.
ENWL	X		The draft legal text delivers the intent.
Peakgen	x		The draft legal text delivers the intent.
Green Frog Power	x		The draft legal text delivers the intent of the revised proposal.

## Q6) As per the revised Proposal, do you believe that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC Panel elections?

Q6) As per the revised Proposal, do you believe that CUSC signatories owned under a controlling parent company structure should be grouped into voting groups to limit their votes to a maximum of four votes for the CUSC Panel elections?	Yes	No	Summary
UKPR	X		Currently some large industry players are able to exercise dominance when voting for CUSC Panel members. The amendment to voting groups will help ensure Parent companies are not able to overwhelm control over CUSC Panel election votes.
NGET	X		As NGET do not participate in the election process the view on this question will be informed by consultation responses and views of stakeholders. At this stage, NGET believe that the Panel election process will be fairer and more proportionate if there is a cap on the number of votes available to a parent company.
EDF Energy		X	The suggested proposal to limit parties to four votes each group is not necessary. It makes more sense for each CUSC party to have one vote as they do now.
Drax Power	X		Drax support grouping parties into a voting group and limiting the number of votes that a voting group can cast. They do not support limiting the votes to a maximum of four, they believe each voting group should have the same number of votes.
Scottish Power	X		If a review of voting arrangements is to be carried out, grouping of CUSC signatories into voting groups would provide more representative voting. Aligning the process with a similar process the BSC follow will provide commonality to parties less familiar with the governance process.
RES	X		RES agree with the vote cap pre parent company and with the initial cap of four votes. RES do not agree the vote must be from one of the distinct roles set out within the report.
Citizens Advice	X		This approach is similar to the BSC model where trading parties are allowed a maximum of two votes, based on the number of Energy Accounts they hold.
ELEXON	X	X	ELEXON agree to use voting groups to avoid the risk of larger corporate Party groups, however the proposed solution does not fully address the issue and leaves larger voting groups of affiliated CUSC signatories holding up to four times as many votes. Introducing the proposed four voting roles does not fully address the defect identified.
ENWL	X		Grouping parties into a voting group seems to be a reasonable solution with the number of votes limited to four based on the roles undertaken.
Peakgen	X		This gives better balance to the voting process. It seems to prudent to ensure that larger parties cannot exert undue influence over the makeup of the panel.
Green Frog Power	X		Four votes seems generous in terms of the different roles under consideration, however it makes sense to increase the chances of a wider range of expertise.



## Q7) Do you have any alternative suggestions on how to ensure that some parent companies of CUSC parties are not able to potentially exercise overwhelming control over cumulative CUSC Panel votes?

Q7) Do you have any alternative suggestions on how to ensure that some parent companies of CUSC parties are not able to potentially exercise overwhelming control over cumulative CUSC Panel votes?	Yes	No	Summary
UKPR		X	UKPR support the suggested methodology outlined in the revised proposal.
NGET		X	NGET have no further alternative suggestions.
EDF Energy		x	EDF have no further alternative suggestions.
Drax Power		X	Apart from grouping signatories into a voting group and limiting the number of votes that can be cast.
Scottish Power		X	The use of voting groups works under the BSC and would appear to be an appropriate model for CUSC.
RES		X	RES have no further alternative suggestions.
Citizens Advice		X	Citizens Advice have no further alternative suggestions.
ELEXON	X		It is unclear why the Workgroup has ruled out adopting the BSC's principle of a level playing field. The BSC approach would help achieve a diverse Panel constitution.
ENWL	X		A wider governance review could consider any alternative solutions.
Peakgen	X		An alternative route would allow non CUSC Parties to register as interested parties and therefore become eligible for one vote in an election.
Green Frog Power		X	The number of votes per party must be limited. One vote per party would be ideal, however one vote per business area is an acceptable alternative.

## Q8) As per the revised Proposal, do you support an independent model i.e. two independent (and salaried) Panel members to join the remaining five user elected Panel members?

Q8) As per the revised Proposal, do you support an independent model i.e. two independent (and salaried) Panel members to join the remaining five user elected Panel members?	Yes	No	Summary
UKPR	X		To ensure that the optimum consumer outcomes are reached it is vital that independent Panel members are able to join with those elected. This will fill any potential knowledge and experience gaps. Furthermore this will ensure that Panel are acting in an independent and transparent manner.
NGET	X		NGET believe this will increase diversity of experience and views in Panel discussions. The Proposal currently provides for the appointment of independent Panel members by the Company with the final approval from Ofgem, however note that the funding implications of this change in the medium to long term.
EDF Energy		X	Two additional Panel members would add cost and add new risk losing valuable expertise due to the displacement of existing Panel members.
Drax Power		X	There is merit in having independent Panel members to provide non-biased opinions, however reducing the number of Panel members that industry can elect go against the principles of diversity. Drax do not consider it appropriate that the Company selects the independent members, a better approach would be the Panel Chair through consultation with Panel members.
Scottish Power		X	There has been no evidence to date that the CUSC Panel has lacked sufficient knowledge to make decisions on proposals presented. Appointment of two independent salaried Panel members provides no guarantee that the requisite expertise would be available as the content of Modifications over a two year term can't be known. Section 8.4.3 of the CUSC allows Ofgem to appoint a further Panel member as an adequate safeguard.
RES	X		RES support the independent model.
Citizens Advice	X		As a member of the BSC Panel, Citizens advice see the benefits of having independent panel members. They have the potential to provide a different perspective on issues outside of the normal CUSC Party viewpoint. Two independent panel members would add additional cost to the Code Administrators role.
ELEXON	X		This will in principle increase the diversity of the Panel for the reasons previously stated. The CUSC should follow the same principle as BSC in respect that the independent Chair should appoint the independent Panel member.
ENWL	X		Having two independent panel members seems reasonable and ENWL would support this element of the proposal. This would ultimately increase costs to the industry but may improve overall governance outcomes.
Peakgen	X		If interested parties aren't that are not represented then independent panel members would be suitable. These panel members would need to be carefully selected to add value to the panel. The independent panel members should not be selected by the Chair or National Grid as Code Administrator.
Green Frog Power	X		It is critical that the CUSC Panel is seen to be impartial.

## Q9) As per the revised Proposal, do you believe that the independent Panel members should be remunerated for their services and do you believe the proposed remuneration arrangements are appropriate?

Q9) As per the revised Proposal, do you believe that the independent Panel members should be remunerated for their services and do you believe the proposed remuneration arrangements are appropriate?	Yes	No	Summary
UKPR	X		The proposed remuneration follows that used in wider industry. The long- term funding should be addressed by Ofgem during the RIIO T2 process. In the interim the independent members should be funded using the CUSC Secretariat budget.
NGET	X		NGET think it's unlikely that independent Panel members could be sourced without remuneration. The appropriate level of remuneration should be at NGET's discretion (in the short term) as per the draft legal text.
EDF Energy	X		Measures should be taken to ensure the appropriate remuneration is received by independently appointed Panel members.
Drax Power	X		Independent Panel members should be remunerated for their services. The Company should not have sole discretion of the remuneration arrangements, this should be aligned with the BSC.
Scottish Power	X		If two independent Panel members are appointed they would probably have to be remunerated to attract candidates with relevant experience. Mirroring the remuneration arrangements under the BSC would be appropriate.
RES	X		RES believe independent panel members should be remunerate for their services.
Citizens Advice	X		Independent Panel members should be remunerated for their time and work. The arrangements should be aligned with the BSC Panel. The Code Administrator does not have enough funding within the current price control framework, therefore it's likely that Ofgem would be required to provide approval for a pass through funding to allow this proposal to be implemented.
ELEXON	X		The proposed remuneration arrangements set out in the consultation document seem similar to those under the BSC, however this is not referenced in the legal text.
ENWL	X		It seems appropriate for independent panel members to be remunerated and mirroring the approach taken under the BSC provides consistency.
Peakgen	X		If the intent is to bring non industry parties to the panel they would need to be paid.
Green Frog Power	X		Green Frog Power agree that independent Panel members should be remunerated.

## Q10) As per the revised Proposal, do you agree that the consecutive terms of office of Panel members should be time limited? If so, is the proposed two consecutive term limit (i.e. four years before a Panel member would have to take a one term break before standing for election again) appropriate?

Q10) As per the revised Proposal, do you agree that the consecutive terms of office of Panel members should be time limited? If so, is the proposed two consecutive term limit (i.e. four years before a Panel member would have to take a one term break before standing for election again) appropriate?	Yes	No	Summary
UKPR	X		The use of this methodology increases the likelihood of securing a wider range of views on the CUSC Panel. The proposed consecutive term limit provides an appropriate method for administering this.
NGET		X	NGET have reservations about the two -term limit from a risk perspective. An example would be if there are not enough interested candidates should there be a mechanism to allow time barred members to stand for a third consecutive term. This would provide the opportunity for additional panel diversity.
EDF Energy		X	This adds new risk losing valuable expertise due to the displacement of existing Panellists on a code which has become more complex overtime.
Drax Power		X	The number of consecutive terms served by Panel members should not be limited. If Parties are placed in voting groups with a limited number of votes this will ensure that the voting process is fair and representative of Industry.
Scottish Power		X	Reviewing the electoral process and restricting the term of office could result in a diminution. Using the previous Panel election processes, it is not clear there are sufficient potential candidates to exclude.
RES	X		RES are minded to agree that office panel members should be time limited.
Citizens Advice	X		This seems a sensible approach, however there is a danger that collective corporate knowledge could be lost if the majority of Panel members leave at the same time. Being an active Panel member of the CUSC is time consuming and this may be a reason smaller players have not put themselves forward. The CUSC does not have a codified method to deal with a situation where there are not enough people who are nominated to sit on the Panel.
ELEXON		X	It is unclear from the legal text on how the restriction works in practice, since it applies to both Panel members and Panel alternates.
ENWL	X		There is benefit from continuity and the expertise built up over multiple terms, as these are elected representatives and this part of this proposal is the inclusion of independent members to provide more balance to the panel.
Peakgen		X	If the voting rights are altered this will not be necessary. There may not be enough experts willing to become a Panel member and its not clear how seats will be filled in those circumstances.
Green Frog Power	X		Four years is an appropriate limit and one term break is reasonable. However the implementation of this modification should be retrospective due to the rapid and radical change in the energy industry.

## Q11) Do you believe there is a need to build greater knowledge and experience of CUSC matters across the industry? If so, does the revised Proposal help to share the knowledge and experience by ensuring a wider range of individuals sit on the Panel over time?

Q11) Do you believe there is a need to build greater knowledge and experience of CUSC matters across the industry? If so, does the revised Proposal help to share the knowledge and experience by ensuring a wider range of individuals sit on the Panel over time?	Yes	No	Summary
UKPR	X		The present voting arrangements provide smaller participants with limited opportunity for involvement. The revised proposal allows for sufficient expert knowledge to be retained whilst allows others to gain experience.
NGET	X		There is a need to build greater knowledge and experience of CUSC matters across industry but NGET do not believe this proposal materially addresses the issue.
EDF Energy	X		There is a risk that as Panel members come towards the end of their career or lose place in elections a wider knowledge base is preferable. The revised proposal helps achieve this objective, it is redundant if the Panel was open to more participants on a voluntary basis.
Drax Power	X		Section 8.4.3 of the CUSC gives Ofgem the power to appoint another Panel member should they consider there to be a gap in expertise amongst the Panel. Drax also agree with some Workgroup members that because of technical and specific nature of some CUSC proposals having independent Panel members may not mean there will be increased expertise on the Panel.
Scottish Power	X		There is a need to build greater knowledge and experience of CUSC matters across the industry, however it is not clear the CUSC membership is the only or best way to increase this. Wider engagement through TCMF and CISG also gives Parties the opportunity to contribute and have their views recorded and presented to the Authority when making its determination.
RES	X		The proposal partially reduces an existing distortion, it will deliver a wider range of participation.
Citizens Advice	X		There is a need to build greater knowledge and experience of CUSC matters across the industry and how these matters impact consumers. The revised proposal should open up the Panel to a wider range of industry representatives over time.
ELEXON	X	X	ELEXON remained unconvinced that changing the CUSC Panel's constitution will directly increase the numbers of candidates for and votes cast in the Panel elections.
ENWL	X		The governance review would be a good platform for review and it would be useful to collaborate with other Code Administrators to share best practice.
Peakgen	X		It would be good if there was a wider understanding of the CUSC. If smaller parties see their views being taken on board they may become more engaged in the CUSC change process.
Green Frog Power	X		It is important that a wider range of industry representatives can descend into the trenches and develop the expertise to ensure that this critical aspect of the market is appropriately governed and designed.

## Q12) As per the revised Proposal, do you agree with the suggested use of Panel alternates whereby Panel members would no longer be able to select an alternate in their absence and alternates would instead be allocated on the basis of being selected by the chair, or being next of a rota?

Q12) As per the revised Proposal, do you agree with the suggested use of Panel alternates whereby Panel members would no longer be able to select an alternate in their absence and alternates would instead be allocated on the basis of being selected by the chair, or being next of a rota?	Yes	No	Summary
UKPR	X		Allowing the Chair to select the Panel alternate will allow impartiality to be maintained at all times. This will ultimately reduce the opportunity for manipulating voting and decision making.
NGET	X		This will allow a more considered selection of the alternate. For example, if the Chair feels a particular alternate will better contribute to the debate on a particular discussion then they can select on that basis.
EDF Energy	X		As a direct result of CMP285 being raised this suggestion has already been put into place and Panel have already adopted to this.
Drax Power	X		Support the use of a rota whereby a list of alternates is randomly generated and when an alternate is required the top name on the list attends.
Scottish Power		X	Panel members should no longer be able to select alternates in their absence. Alternates should be given every opportunity to participate when a Panel member is unable to attend. Alternates should not be selected by the Chair but by a rota allowing equal opportunity to contribute.
RES		X	RES is assuming that the Chair will be able to exercise a degree of common sense and allow Panel members to suggest specific alternates which the Chair can consider on a case by case basis.
Citizens Advice	X		Anything which promotes fairness of process and reduces the opportunity for criticism and provides transparency is welcomed. The Chair should waive their right to select an alternate, more clarity is needed on what the Chair's criteria for selection of an alternate will be.
ELEXON		X	Further details to this question were provided in response to question 1 of the consultation.
ENWL		X	ENWL does not believe this is appropriate as a panel member would have a designated alternate- would this approach impact the quoracy of the Panel.
Peakgen		X	Panel members and alternates will have a better ability to maintain consistency and communication if they have their own alternates.
Green Frog Power	X		Green Frog Power believes this approach is appropriate.

# Q13) As per the revised Proposal, do you agree with the proposed changes to the nomination and voting process under Section 8A i.e. nominated candidates must provide additional information and parties wishing to vote must confirm their Voting Group to the Code Administrator in advance?

Q13) As per the revised Proposal, do you agree with the proposed changes to the nomination and voting process under Section 8A i.e. nominated candidates must provide additional information and parties wishing to vote must confirm their Voting Group to the Code Administrator in advance?	Yes	No	Summary
UKPR	X		The proposed changes will further increase the level of transparency. The confirmation of voting groups in advance will provide assurance that the correct number of votes are being allocated to each party.
NGET	X		NGET believe that certain elements of the changes to Section 8A will improve transparency and efficiency. However, NGET have reservations whether the additional transparency in relation to the financial interests of Panel members will be proportionate to the additional burden on panel members and Code Administrators. NGET suggest further consideration on whether the balance between transparency and efficiency is right in this regard.
EDF Energy		X	The suggested proposal to limit parties to 4 votes for each group is not necessary, it makes more sense for each CUSC Party to have one vote. Taking the proposal as is, Section 8A legal text is then necessary if the proposal was implemented.
Drax Power	X		This is similar to the BSC arrangements and works well. It is important for Parties to have the opportunity to review their voting group and notify the Code Administrator of any changes prior to an election.
Scottish Power		X	Requiring parties to confirm their voting group could result in the disenfranchisement of a number of smaller parties. Requiring Parties to inform the Code Administrator of any errors should be sufficient.
RES		X	RES do not agree that each vote must be from one of the distinct roles. To the extent that this proposal is adopted then the proposed changes would seem appropriate.
Citizens Advice	X		The proposed changes to the nomination and voting process seems reasonable to ensure fairness. Citizens Advice would caution against this becoming an administrative burden on the Code Administrator. The CUSC Party should be responsible for providing accurate information.
ELEXON	X		The requirement for CUSC Parties to confirm the validity of their voting group appears similar to the BSC. The proposed legal text appears to prevent a voting group from receiving voting papers and exercising any vote unless it has confirmed to National Grid in advance. By including an extra administrative hurdle this could be seen as a barrier to voting. BSC does not create this barrier so the SC approach should be adopted in CMP285.
ENWL	X		The governance review could be an appropriate route to agree changes to these processes and what additional information would be required.
Peakgen	X		National Grid should confirm to the parties what their voting group is expected to be as between elections parties may forget or their structure changes.
Green Frog Power	X		Green Frog Power agree with the revised proposal.

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Modification potential alternative submitted to: *CMP285- UKPR (1)*

What stage is this document at?

# CMP285

- 01 Proposed alternative
- 02 Formal Workgroup alternative

**Mod Title: Grouping signatories and allowing a maximum of four votes per parent company**

**Purpose of alternative Proposal:**

The proposal seeks to ensure that some parent companies of CUSC parties are no longer able to exercise overwhelming control over cumulative CUSC Panel votes. This is to be achieved by granting parent companies four votes, taking into account the multiple distinct roles that CUSC parties operate under.

**Date submitted to Code Administrator: 28 September 2018**

**You are: A Workgroup member**

**Workgroup vote outcome: Formal alternative/not alternative**

*(Should your potential alternative become a formal alternative it will be allocated a reference)*



**Any Questions?**



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Alternative Proposer(s):

**Michael Jenner**

UKPR



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## 1 Alternative proposed solution for workgroup review

Under the CUSC it currently states that each subsidiary (i.e. each separate CUSC Party) is allocated an individual vote, which potentially gives some parent signatories a disproportionate cumulative influence over the outcome of the panel election voting process.

The alternative proposal would group the ultimate parent company with all subsidiaries. This would be completed down the tiers of subsidiaries – based on the definition of a subsidiary as any company in which the parent holds a majority stake (i.e. 51%+ of shareholding) – until the entire structure of companies under the majority control of the ultimate parent company are grouped together as one CUSC ‘parent company group’.

The number of votes allocated would then be limited to a maximum of four, based on the number of distinct roles (i.e. the role for which each separate CUSC signatory is registered) attributed to CUSC signatories under each parent company. The four suggested roles are as follows:

- (a) the Generation Voting Group;
- (b) the Supply Voting Group;
- (c) the Demand Voting Group; and
- (d) the Interconnector Voting Group

UKPR consider the voting limit to be more fitting than current arrangements, as well as more representative of the makeup of the CUSC and its signatories.

## 2 Difference between this proposal and Original

Following workgroup discussions a revised proposal was developed and subsequently progressed.

This alternative proposal can be considered comparable to certain elements of the revised proposal – developed to address a number of observed defects, which include but are not limited to:

1. Grouping signatories and allocating a maximum number of votes
2. Utilising an independent model including independent panel members
3. Consecutive terms – limit of two consecutive terms of office allowed for panel members
4. Alternates – selected by the chair rather than the absent panel member
5. Improving transparency, including the publication of the outcomes of Panel Elections

This alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (1) the number of votes cast by each parent company and point (5) improving transparency.

### 3 Justification for alternative proposal against Applicable CUSC Objectives

Through registering multiple subsidiary enterprises as CUSC signatories, some ultimate parent companies have been able to secure a significant number of votes in the CUSC Panel election (one CUSC signatory can cast one vote). This has created a disproportionate level of influence for a select few.

Standard Objectives	Positive/neutral/negative
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Neutral
(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;	Neutral
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and	Neutral
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive

#### Charging Objective D

This modification will address the overwhelming dominance that some large industry players are able to exercise when voting for CUSC Panel members.

We believe the modification is neutral of other objectives.

### 4 Impacts and Other Considerations

As per the revised modification.

#### *Consumer Impacts*

As per the revised modification.

### 5 Implementation

As per both the original and revised modification proposals.

### 6 Legal Text

As previously stated, this alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (1) the number of votes cast by each parent company and point (5) improving transparency. As such, the relevant sections of the legal text can be found below:

Modification potential alternative submitted to: *CMP285- UKPR (2)*

What stage is this document at?

# CMP285

01	Proposed alternative
02	Formal Workgroup alternative

**Mod Title: Independent model – two independent panel members to join the given elected members.**

**Purpose of alternative Proposal:**

Paid independent members would be selected to fill any perceived knowledge and experience gaps in the CUSC panel membership following the CUSC Panel Election.



**Any Questions?**

**Date submitted to Code Administrator: 28 September 2018**

**You are: A Workgroup member**



[cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com)

**Workgroup vote outcome: Formal alternative/not alternative**

*(Should your potential alternative become a formal alternative it will be allocated a reference)*



Alternative Proposer(s):  
**Michael Jenner**  
UKPR



[Michael.Jenner@ukpowerreserve.com](mailto:Michael.Jenner@ukpowerreserve.com)

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## 1 Alternative proposed solution for workgroup review

The proposal would use the independent CUSC Panel Member model whereby paid independent members would be selected to fill any perceived knowledge and experience gaps in the CUSC panel membership following the CUSC Panel Election. The proposal suggests using two independent members for this purpose.

Independent will be defined as any person not currently in the employ or having any material financial interest in a CUSC signatory. However, energy sector experience will still be required so that they will not be completely “independent” from the energy sector.

The two independent CUSC Panel Members would be remunerated at a rate reflective of the BSC Panel’s independent members’ remuneration.

## 2 Difference between this proposal and Original

Following workgroup discussions a revised proposal was developed and subsequently progressed.

This alternative proposal can be considered comparable to certain elements of the revised proposal – developed to address a number of observed defects, which include but are not limited to:

1. Grouping signatories and allocating a maximum number of votes
2. Utilising an independent model including independent panel members
3. Consecutive terms – limit of two consecutive terms of office allowed for panel members
4. Alternates – selected by the chair rather than the absent panel member
5. Improving transparency, including the publication of the outcomes of Panel Elections

This alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (2) utilising an independent model including independent panel members and point (5) improving transparency.

## 3 Justification for alternative proposal against Applicable CUSC Objectives

It is crucial that the CUSC panel voting process is transparent, fair and representative of the views of the wider industry. Therefore, to ensure that the optimum consumer outcomes are reached, it is vital that independent Panel members are able to join with those that are elected.

Standard Objectives	Positive/neutral/negative
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Neutral
(b) Facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale,	Neutral

distribution and purchase of electricity;	
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and	Neutral
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive

#### Charging Objective D

The change will ensure that the CUSC panel is - and is perceived to be – composed of truly independent industry experts seeking to work for the interests of consumers.

We believe the modification is neutral of other objectives.

## 4 Impacts and Other Considerations

As per the revised modification.

#### *Consumer Impacts*

As per the revised modification.

## 5 Implementation

As per both the original and revised modification proposals.

## 6 Legal Text

As previously stated, this alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (2) utilising an independent model including independent panel members and point (5) improving transparency. As such, the relevant sections of the legal text can be found below:

To add

Modification potential alternative submitted to: *CMP285- UKPR (3)*

What stage is this document at?

# CMP285

- 01 Proposed alternative
- 02 Formal Workgroup alternative

**Mod Title: Consecutive terms – limit of two consecutive terms of office allowed for panel members.**

### Purpose of alternative Proposal:

A four-year consecutive term limit would be introduced so a Panel Member could only stand for two consecutive terms. Limiting the term to two consecutive terms increases the likelihood of securing wider views and backgrounds on the CUSC Panel and building a wider base of industry expertise year by year by developing a wider group of individuals with experience of serving on the CUSC Panel.



**Any Questions?**

**Date submitted to Code Administrator: 28 September 2018**

**You are: A Workgroup member**

**Workgroup vote outcome: Formal alternative/not alternative**

*(Should your potential alternative become a formal alternative it will be allocated a reference)*



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Alternative Proposer(s):

**Michael Jenner**

UKPR



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## 1 Alternative proposed solution for workgroup review

A four-year consecutive term limit would be introduced so a Panel Member could only stand for two consecutive terms. The proposal does not intend for these changes to be retrospective, meaning that previous time served on the panel before the 2019 elections will not be relevant to the proposed two-consecutive term limit.

The proposal would also allow for a previous Panel Member to re-stand after one election cycle off the CUSC panel so that the expertise of previously longstanding (i.e. those with two consecutive terms) members will not be lost.

## 2 Difference between this proposal and Original

Following workgroup discussions a revised proposal was developed and subsequently progressed.

This alternative proposal can be considered comparable to certain elements of the revised proposal – developed to address a number of observed defects, which include but are not limited to:

1. Grouping signatories and allocating a maximum number of votes
2. Utilising an independent model including independent panel members
3. Consecutive terms – limit of two consecutive terms of office allowed for panel members
4. Alternates – selected by the chair rather than the absent panel member
5. Improving transparency, including the publication of the outcomes of Panel Elections

This alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (3) a limit of two consecutive terms of office allowed for panel members and point (5) improving transparency.

## 3 Justification for alternative proposal against Applicable CUSC Objectives

The current and previous makeup of the CUSC Panel has been dominated by incumbent members, with several Panel Members having been in office for – or close to – 10 years. The present arrangements provide smaller participants with very limited opportunity for involvement, and as a result limits the sharing of knowledge and experience amongst wider industry.

Standard Objectives	Positive/neutral/negative
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Neutral
(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;	Positive

(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and	Neutral
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Neutral

### Charging Objective B

The proposal will afford smaller companies with an opportunity to have a meaningful influence on the CUSC Panel selection process and limits the opportunity for sole influence by a select few. In turn, the proposal will aid in mediating against any negative perceptions from the industry – or consumers – with regard to the diversity of the Panel.

We believe the modification is neutral of other objectives.

## 4 Impacts and Other Considerations

As per the revised modification.

### *Consumer Impacts*

As per the revised modification.

## 5 Implementation

As per both the original and revised modification proposals.

## 6 Legal Text

As previously stated, this alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (3) a limit of two consecutive terms of office allowed for panel members and point (5) improving transparency. As such, the relevant sections of the legal text can be found below:

To add

Modification potential alternative submitted to: *CMP285- UKPR (4)*

What stage is this document at?

# CMP285

- 01 Proposed alternative
- 02 Formal Workgroup alternative

**Mod Title: Alternative panel members to be selected by the Panel Chair as opposed to an elected Panel Member**

**Purpose of alternative Proposal:**

The use of a differing method for selecting alternate Panel Members – rather than allowing the absent Panel member to make the selection – will give a guarantee that impartiality is adhered to and provides additional transparency to the voting process.



**Any Questions?**

**Date submitted to Code Administrator: 28 September 2018**

**You are: A Workgroup member**



[cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com)

**Workgroup vote outcome: Formal alternative/not alternative**

*(Should your potential alternative become a formal alternative it will be allocated a reference)*



Alternative Proposer(s):

**Michael Jenner**

UKPR



[Michael.Jenner@ukpowerreserve.com](mailto:Michael.Jenner@ukpowerreserve.com)

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## 1 Alternative proposed solution for workgroup review

In the scenario that an elected Panel Member is unable to attend a CUSC Panel meeting, the Panel Chair will be given the responsibility to select which alternate Panel Member should be called to sit on the Panel.

## 2 Difference between this proposal and Original

Following workgroup discussions a revised proposal was developed and subsequently progressed.

This alternative proposal can be considered comparable to the majority of elements within the revised proposal – developed to address a number of observed defects, which include but are not limited to:

1. Grouping signatories and allocating a maximum number of votes
2. Utilising an independent model including independent panel members
3. Consecutive terms – limit of two consecutive terms of office allowed for panel members
4. Alternates – selected by the chair rather than the absent panel member
5. Improving transparency, including the publication of the outcomes of Panel Elections

This alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (4) the selection of alternates by the chair and point (5) improving transparency.

## 3 Justification for alternative proposal against Applicable CUSC Objectives

The current approach of selecting alternate Panel Members is questionable in view of transparency and impartiality, given that Panel Members select alternate members themselves.

Standard Objectives	Positive/neutral/negative
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Neutral
(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;	Neutral
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and	Neutral
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive

## Charging Objective D

We consider this to be a more robust process than currently in place; ultimately reducing the opportunities for manipulating voting and decision making, as well as removing the possible perception that voting can be manipulated.

We believe the modification is neutral of other objectives.

## 4 Impacts and Other Considerations

As per the revised modification.

### *Consumer Impacts*

As per the revised modification.

## 5 Implementation

As per both the original and revised modification proposals.

## 6 Legal Text

As previously stated, this alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (4) the selection of alternates by the chair and point (5) improving transparency.. As such, the relevant sections of the legal text can be found below:

To add

Modification potential alternative submitted to: *CMP285- UKPR (5)*

What stage is this document at?

# CMP285

01	Proposed alternative
02	Formal Workgroup alternative

**Mod Title: Alternative panel members to be selected via a rota system as opposed to an elected Panel Member**

**Purpose of alternative Proposal:**

The use of a differing method for selecting alternate Panel Members – rather than allowing the absent Panel member to make the selection – will give a guarantee that impartiality is adhered to and provides additional transparency to the voting process.



**Any Questions?**

**Date submitted to Code Administrator: 28 September 2018**

**You are: A Workgroup member**



[cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com)

**Workgroup vote outcome: Formal alternative/not alternative**

*(Should your potential alternative become a formal alternative it will be allocated a reference)*



Alternative Proposer(s):

**Michael Jenner**

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## 1 Alternative proposed solution for workgroup review

In the scenario that an elected Panel Member is unable to attend a CUSC Panel meeting, a rotational approach should be used to determine which alternate Panel Member should be called to sit on the Panel.

The system would allow for a list of alternates to be randomly generated, with the individual at the top of the list assigned to the seat. When an alternate is next required, the alternate below on the list would attend, and so on until the list is exhausted.

## 2 Difference between this proposal and Original

Following workgroup discussions a revised proposal was developed and subsequently progressed.

This alternative proposal can be considered comparable to the majority of elements within the revised proposal – developed to address a number of observed defects, which include but are not limited to:

1. Grouping signatories and allocating a maximum number of votes
2. Utilising an independent model including independent panel members
3. Consecutive terms – limit of two consecutive terms of office allowed for panel members
4. Alternates – selected by the chair rather than the absent panel member
5. Improving transparency, including the publication of the outcomes of Panel Elections

This alternative looks to maintain all elements of the revised proposal, with the exception of point (4) the selection of alternates – though amended to using a rota system.

## 3 Justification for alternative proposal against Applicable CUSC Objectives

The current approach of selecting alternate Panel Members is questionable in view of transparency and impartiality, given that Panel Members select alternate members themselves.

Standard Objectives	Positive/neutral/negative
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Neutral
(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;	Neutral
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European	Neutral

Commission and/or the Agency; and	
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive

#### Charging Objective D

We consider this to be a more robust process than currently in place; ultimately reducing the opportunities for manipulating voting and decision making, as well as removing the possible perception that voting can be manipulated.

We believe the modification is neutral of other objectives.

## 4 Impacts and Other Considerations

As per the revised modification.

#### *Consumer Impacts*

As per the revised modification.

## 5 Implementation

As per both the original and revised modification proposals.

## 6 Legal Text

As previously stated, this alternative looks to maintain all elements of the revised proposal, with the exception of point (4) the selection of alternates. As such, the relevant sections of the legal text can be found below:

To add



Modification potential alternative submitted to: *CMP285- UKPR (6)*

What stage is this document at?

# CMP285

01	Proposed alternative
02	Formal Workgroup alternative

**Mod Title:**

**Purpose of alternative Proposal:**

The alternative seeks to reform the CUSC governance – with changes proposed to voting, the selection of alternates and transparency – to enhance the independence and diversity of panel members and ensure wider engagement from CUSC signatories.



**Any Questions?**

**Date submitted to Code Administrator: 28 September 2018**

**You are: A Workgroup member**



[cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com)

**Workgroup vote outcome: Formal alternative/not alternative**

*(Should your potential alternative become a formal alternative it will be allocated a reference)*



Alternative Proposer(s):

**Michael Jenner**

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[Michael.Jenner@ukpowerreserve.com](mailto:Michael.Jenner@ukpowerreserve.com)

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6	Legal Text .....	4

## 1 Alternative proposed solution for workgroup review

Under the CUSC it currently states that each subsidiary (i.e. each separate CUSC Party) is allocated an individual vote, which potentially gives some parent signatories a disproportionate cumulative influence over the outcome of the panel election voting process.

The alternative proposal would group the ultimate parent company with all subsidiaries. This would be completed down the tiers of subsidiaries – based on the definition of a subsidiary as any company in which the parent holds a majority stake (i.e. 51%+ of shareholding) – until the entire structure of companies under the majority control of the ultimate parent company are grouped together as one CUSC ‘parent company group’.

The number of votes allocated would then be limited to a maximum of four, based on the number of distinct roles (i.e. the role for which each separate CUSC signatory is registered) attributed to CUSC signatories under each parent company. The four suggested roles are as follows:

- (a) the Generation Voting Group;
- (b) the Supply Voting Group;
- (c) the Demand Voting Group; and
- (d) the Interconnector Voting Group

Furthermore, UKPR propose the use of a differing method for selecting alternate Panel Members – rather than allowing the absent Panel member to make the selection.

In the scenario that an elected Panel Member is unable to attend a CUSC Panel meeting, a rotational approach should be used to determine which alternate Panel Member should be called to sit on the Panel. The methodology used for selection would be as set out in alternative proposal 5.

## 2 Difference between this proposal and Original

Following workgroup discussions a revised proposal was developed and subsequently progressed.

This alternative proposal can be considered comparable to the majority of elements within the revised proposal – developed to address a number of observed defects, which include but are not limited to:

1. Grouping signatories and allocating a maximum number of votes
2. Utilising an independent model including independent panel members
3. Consecutive terms – limit of two consecutive terms of office allowed for panel members
4. Alternates – selected by the chair rather than the absent panel member
5. Improving transparency, including the publication of the outcomes of Panel Elections

This alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (1) the grouping of signatories and

allocating a maximum number of votes; point (4) the selection of alternates – though amended to using a rota system – and point (5) improving transparency.

### 3 Justification for alternative proposal against Applicable CUSC Objectives

Through registering multiple subsidiary enterprises as CUSC signatories, some ultimate parent companies have been able to secure a significant number of votes in the CUSC Panel election (one CUSC signatory can cast one vote). This has created a disproportionate level of influence for a select few.

In addition, the current approach of selecting alternate Panel Members is questionable in view of transparency and impartiality, given that Panel Members select alternate members themselves.

Standard Objectives	Positive/neutral/negative
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Neutral
(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;	Neutral
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and	Neutral
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive

#### Charging Objective D

This modification will address the overwhelming dominance that some large industry players are able to exercise when voting for CUSC Panel members.

It will also allow for a more robust process than currently in place; ultimately reducing the opportunities for manipulating voting and decision making, as well as removing the possible perception that voting can be manipulated.

We believe the modification is neutral of other objectives.

### 4 Impacts and Other Considerations

As per the revised modification.

#### *Consumer Impacts*

As per the revised modification.

## 5 Implementation

As per both the original and revised modification proposals.

## 6 Legal Text

As previously stated, this alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (1) the grouping of signatories and allocating a maximum number of votes; point (4) the selection of alternates – though amended to using a rota system – and point (5) improving transparency. As such, the relevant sections of the legal text can be found below:

To add

Modification potential alternative submitted to: *CMP285- UKPR (7)*

What stage is this document at?

# CMP285

- 01 Proposed alternative
- 02 Formal Workgroup alternative

### Mod Title:

#### Purpose of alternative Proposal:

The alternative seeks to reform the CUSC governance – with changes proposed to voting, the use of independent members, the selection of alternates and transparency – to enhance the independence and diversity of panel members and ensure wider engagement from CUSC signatories.

**Date submitted to Code Administrator: 28 September 2018**

**You are: A Workgroup member**

**Workgroup vote outcome: Formal alternative/not alternative**

*(Should your potential alternative become a formal alternative it will be allocated a reference)*



**Any Questions?**



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Alternative Proposer(s):

**Michael Jenner**

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## 1 Alternative proposed solution for workgroup review

Under the CUSC it currently states that each subsidiary (i.e. each separate CUSC Party) is allocated an individual vote, which potentially gives some parent signatories a disproportionate cumulative influence over the outcome of the panel election voting process.

The alternative proposal would group the ultimate parent company with all subsidiaries. This would be completed down the tiers of subsidiaries – based on the definition of a subsidiary as any company in which the parent holds a majority stake (i.e. 51%+ of shareholding) – until the entire structure of companies under the majority control of the ultimate parent company are grouped together as one CUSC ‘parent company group’.

The number of votes allocated would then be limited to a maximum of four, based on the number of distinct roles (i.e. the role for which each separate CUSC signatory is registered) attributed to CUSC signatories under each parent company. The four suggested roles are as follows:

- (a) the Generation Voting Group;
- (b) the Supply Voting Group;
- (c) the Demand Voting Group; and
- (d) the Interconnector Voting Group

Secondly, the proposal would use the independent CUSC Panel Member model whereby paid independent members would be selected to fill any perceived knowledge and experience gaps in the CUSC panel membership following the CUSC Panel Election. The proposal suggests using two independent members for this purpose.

Independent will be defined as any person not currently in the employ or having any material financial interest in a CUSC signatory. However, energy sector experience will still be required so that they will not be completely “independent” from the energy sector.

The two independent CUSC Panel Members would be remunerated at a rate reflective of the BSC Panel’s independent members’ remuneration.

Furthermore, UKPR propose the use of a differing method for selecting alternate Panel Members – rather than allowing the absent Panel member to make the selection.

In the scenario that an elected Panel Member is unable to attend a CUSC Panel meeting, a rotational approach should be used to determine which alternate Panel Member should be called to sit on the Panel. The methodology used for selection would be as set out in alternative proposal 5.

## 2 Difference between this proposal and Original

Following workgroup discussions a revised proposal was developed and subsequently progressed.

This alternative proposal can be considered comparable to the majority of elements within the revised proposal – developed to address a number of observed defects, which include but are not limited to:

1. Grouping signatories and allocating a maximum number of votes
2. Utilising an independent model including independent panel members
3. Consecutive terms – limit of two consecutive terms of office allowed for panel members
4. Alternates – selected by the chair rather than the absent panel member
5. Improving transparency, including the publication of the outcomes of Panel Elections

This alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (1) the grouping of signatories and allocating a maximum number of votes; point (2) utilising an independent model including independent panel members; point (4) the selection of alternates – though amended to using a rota system – and point (5) improving transparency.

### 3 Justification for alternative proposal against Applicable CUSC Objectives

Through registering multiple subsidiary enterprises as CUSC signatories, some ultimate parent companies have been able to secure a significant number of votes in the CUSC Panel election (one CUSC signatory can cast one vote). This has created a disproportionate level of influence for a select few.

It is also crucial that the CUSC panel voting process is transparent, fair and representative of the views of the wider industry. Therefore, to ensure that the optimum consumer outcomes are reached, it is vital that independent Panel members are able to join with those that are elected.

In addition, the current approach of selecting alternate Panel Members is questionable in view of transparency and impartiality, given that Panel Members select alternate members themselves.

Standard Objectives	Positive/neutral/negative
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Neutral
(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;	Neutral
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and	Neutral
(d) Promoting efficiency in the implementation and	Positive

administration of the CUSC arrangements.	
------------------------------------------	--

### Charging Objective D

This modification will address the overwhelming dominance that some large industry players are able to exercise when voting for CUSC Panel members.

It will also allow for a more robust process than currently in place; ultimately reducing the opportunities for manipulating voting and decision making, as well as removing the possible perception that voting can be manipulated.

We believe the modification is neutral of other objectives.

## 4 Impacts and Other Considerations

As per the revised modification.

### *Consumer Impacts*

As per the revised modification.

## 5 Implementation

As per both the original and revised modification proposals.

## 6 Legal Text

As previously stated, this alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (1) the grouping of signatories and allocating a maximum number of votes; point (2) utilising an independent model including independent panel members; point (4) the selection of alternates – though amended to using a rota system – and point (5) improving transparency. As such, the relevant sections of the legal text can be found below:

To add



Modification potential alternative submitted to: *CMP285- UKPR (8)*

What stage is this document at?

# CMP285

- 01 Proposed alternative
- 02 Formal Workgroup alternative

**Mod Title:**

**Purpose of alternative Proposal:**

The alternative seeks to reform the CUSC governance – with changes proposed to the use of independent members, the selection of alternates and transparency – to enhance the independence and diversity of panel members and ensure wider engagement from CUSC signatories.

**Date submitted to Code Administrator: 28 September 2018**

**You are: A Workgroup member**

**Workgroup vote outcome: Formal alternative/not alternative**

*(Should your potential alternative become a formal alternative it will be allocated a reference)*



**Any Questions?**



[cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com)



Alternative Proposer(s):

**Michael Jenner**

UKPR



[Michael.Jenner@ukpowerreserve.com](mailto:Michael.Jenner@ukpowerreserve.com)

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## 1 Alternative proposed solution for workgroup review

Firstly, the proposal would use the independent CUSC Panel Member model whereby paid independent members would be selected to fill any perceived knowledge and experience gaps in the CUSC panel membership following the CUSC Panel Election. The proposal suggests using two independent members for this purpose.

Independent will be defined as any person not currently in the employ or having any material financial interest in a CUSC signatory. However, energy sector experience will still be required so that they will not be completely “independent” from the energy sector.

The two independent CUSC Panel Members would be remunerated at a rate reflective of the BSC Panel’s independent members’ remuneration.

Furthermore, UKPR propose the use of a differing method for selecting alternate Panel Members – rather than allowing the absent Panel member to make the selection.

In the scenario that an elected Panel Member is unable to attend a CUSC Panel meeting, a rotational approach should be used to determine which alternate Panel Member should be called to sit on the Panel. The methodology used for selection would be as set out in alternative proposal 5.

## 2 Difference between this proposal and Original

Following workgroup discussions a revised proposal was developed and subsequently progressed.

This alternative proposal can be considered comparable to the majority of elements within the revised proposal – developed to address a number of observed defects, which include but are not limited to:

1. Grouping signatories and allocating a maximum number of votes
2. Utilising an independent model including independent panel members
3. Consecutive terms – limit of two consecutive terms of office allowed for panel members
4. Alternates – selected by the chair rather than the absent panel member
5. Improving transparency, including the publication of the outcomes of Panel Elections

This alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (2) utilising an independent model including independent panel members; point (4) the selection of alternates – though amended to using a rota system – and point (5) improving transparency.

## 3 Justification for alternative proposal against Applicable CUSC Objectives

It is crucial that the CUSC panel voting process is transparent, fair and representative of the views of the wider industry. Therefore, to ensure that the

optimum consumer outcomes are reached, it is vital that independent Panel members are able to join with those that are elected.

In addition, the current approach of selecting alternate Panel Members is questionable in view of transparency and impartiality, given that Panel Members select alternate members themselves.

Standard Objectives	Positive/neutral/negative
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Neutral
(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;	Neutral
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and	Neutral
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive

#### Charging Objective D

The change will ensure that the CUSC panel is - and is perceived to be – composed of truly independent industry experts seeking to work for the interests of consumers.

In tandem, the changes to alternate selection will reduce the opportunity for manipulating voting and decision making, as well as remove the possible perception that voting can be manipulated.

We believe the modification is neutral of other objectives.

## 4 Impacts and Other Considerations

As per the revised modification.

### *Consumer Impacts*

As per the revised modification.

## 5 Implementation

As per both the original and revised modification proposals.

## 6 Legal Text

As previously stated, this alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (2) utilising an

independent model including independent panel members; point (4) the selection of alternates – though amended to using a rota system – and point (5) improving transparency. As such, the relevant sections of the legal text can be found below:

To add

Modification potential alternative submitted to: *CMP285- UKPR (9)*

What stage is this document at?

# CMP285

01	Proposed alternative
02	Formal Workgroup alternative

**Mod Title:**

**Purpose of alternative Proposal:**

The alternative seeks to reform the CUSC governance – with changes proposed to the serving of consecutive terms, the use of independent members, the selection of alternates and transparency – to enhance the independence and diversity of panel members and ensure wider engagement from CUSC signatories.



**Any Questions?**

**Date submitted to Code Administrator: 28 September 2018**

**You are: A Workgroup member**



[cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com)

**Workgroup vote outcome: Formal alternative/not alternative**

*(Should your potential alternative become a formal alternative it will be allocated a reference)*



Alternative Proposer(s):

**Michael Jenner**

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## 1 Alternative proposed solution for workgroup review

Firstly, the proposal would use the independent CUSC Panel Member model whereby paid independent members would be selected to fill any perceived knowledge and experience gaps in the CUSC panel membership following the CUSC Panel Election. The proposal suggests using two independent members for this purpose.

Independent will be defined as any person not currently in the employ or having any material financial interest in a CUSC signatory. However, energy sector experience will still be required so that they will not be completely “independent” from the energy sector.

The two independent CUSC Panel Members would be remunerated at a rate reflective of the BSC Panel’s independent members’ remuneration.

Secondly, A four-year consecutive term limit would be introduced so a Panel Member could only stand for two consecutive terms. The proposal does not intend for these changes to be retrospective, meaning that previous time served on the panel before the 2019 elections will not be relevant to the proposed two-consecutive term limit.

The proposal would also allow for a previous Panel Member to re-stand after one election cycle off the CUSC panel so that the expertise of previously longstanding (i.e. those with two consecutive terms) members will not be lost.

Furthermore, UKPR propose the use of a differing method for selecting alternate Panel Members – rather than allowing the absent Panel member to make the selection.

In the scenario that an elected Panel Member is unable to attend a CUSC Panel meeting, a rotational approach should be used to determine which alternate Panel Member should be called to sit on the Panel. The methodology used for selection would be as set out in alternative proposal 5.

## 2 Difference between this proposal and Original

Following workgroup discussions a revised proposal was developed and subsequently progressed.

This alternative proposal can be considered comparable to the majority of elements within the revised proposal – developed to address a number of observed defects, which include but are not limited to:

1. Grouping signatories and allocating a maximum number of votes
2. Utilising an independent model including independent panel members
3. Consecutive terms – limit of two consecutive terms of office allowed for panel members
4. Alternates – selected by the chair rather than the absent panel member
5. Improving transparency, including the publication of the outcomes of Panel Elections

This alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (2) utilising an independent model including independent panel members; point (3) a limit of two consecutive terms of office allowed for panel members; point (4) the selection of alternates – though amended to using a rota system – and point (5) improving transparency.

### 3 Justification for alternative proposal against Applicable CUSC Objectives

The current and previous makeup of the CUSC Panel has been dominated by incumbent members, with several Panel Members having been in office for – or close to – 10 years. The present arrangements provide smaller participants with very limited opportunity for involvement, and as a result limits the sharing of knowledge and experience amongst wider industry.

It is also crucial that the CUSC panel voting process is transparent, fair and representative of the views of the wider industry. Therefore, to ensure that the optimum consumer outcomes are reached, it is vital that independent Panel members are able to join with those that are elected.

In addition, the current approach of selecting alternate Panel Members is questionable in view of transparency and impartiality, given that Panel Members select alternate members themselves.

Standard Objectives	Positive/neutral/negative
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Neutral
(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;	Neutral
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and	Neutral
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive

#### Charging Objective D

This proposal will afford smaller companies with an opportunity to have a meaningful influence on the CUSC Panel selection process and limits the opportunity for sole influence by a select few.

It will also allow for a more robust process than currently in place; ultimately reducing the opportunities for manipulating voting and decision making, as well as removing the possible perception that voting can be manipulated.

We believe the modification is neutral of other objectives.

## 4 Impacts and Other Considerations

As per the revised modification.

### *Consumer Impacts*

As per the revised modification.

## 5 Implementation

As per both the original and revised modification proposals.

## 6 Legal Text

As previously stated, this alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (2) utilising an independent model including independent panel members; point (3) a limit of two consecutive terms of office allowed for panel members; point (4) the selection of alternates – though amended to using a rota system – and point (5) improving transparency. As such, the relevant sections of the legal text can be found below:

To add



Modification potential alternative submitted to: *CMP285- UKPR (10)*

What stage is this document at?

# CMP285

- 01** Proposed alternative
- 02** Formal Workgroup alternative

**Mod Title: Alternative panel members to be selected via a rota system as opposed to an elected Panel Member**

**Purpose of alternative Proposal:**

The use of a differing method for selecting alternate Panel Members – rather than allowing the absent Panel member to make the selection – will give a guarantee that impartiality is adhered to and provides additional transparency to the voting process.



**Any Questions?**

**Date submitted to Code Administrator: 28 September 2018**

**You are: A Workgroup member**



[cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com)

**Workgroup vote outcome: Formal alternative/not alternative**

*(Should your potential alternative become a formal alternative it will be allocated a reference)*



Alternative Proposer(s):

**Michael Jenner**

UKPR



[Michael.Jenner@ukpowerreserve.com](mailto:Michael.Jenner@ukpowerreserve.com)

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3	Justification for alternative proposal against Applicable CUSC Objectives.....	2
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## 1 Alternative proposed solution for workgroup review

In the scenario that an elected Panel Member is unable to attend a CUSC Panel meeting, a rotational approach should be used to determine which alternate Panel Member should be called to sit on the Panel.

The system would allow for a list of alternates to be randomly generated, with the individual at the top of the list assigned to the seat. When an alternate is next required, the alternate below on the list would attend, and so on until the list is exhausted.

## 2 Difference between this proposal and Original

Following workgroup discussions a revised proposal was developed and subsequently progressed.

This alternative proposal can be considered comparable to the majority of elements within the revised proposal – developed to address a number of observed defects, which include but are not limited to:

1. Grouping signatories and allocating a maximum number of votes
2. Utilising an independent model including independent panel members
3. Consecutive terms – limit of two consecutive terms of office allowed for panel members
4. Alternates – selected by the chair rather than the absent panel member
5. Improving transparency, including the publication of the outcomes of Panel Elections

This alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (4) the selection of alternates – though amended to using a rota system – and point (5) improving transparency.

## 3 Justification for alternative proposal against Applicable CUSC Objectives

The current approach of selecting alternate Panel Members is questionable in view of transparency and impartiality, given that Panel Members select alternate members themselves.

Standard Objectives	Positive/neutral/negative
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Neutral
(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;	Neutral
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European	Neutral

Commission and/or the Agency; and	
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive

#### Charging Objective D

We consider this to be a more robust process than currently in place; ultimately reducing the opportunities for manipulating voting and decision making, as well as removing the possible perception that voting can be manipulated.

We believe the modification is neutral of other objectives.

## 4 Impacts and Other Considerations

As per the revised modification.

#### *Consumer Impacts*

As per the revised modification.

## 5 Implementation

As per both the original and revised modification proposals.

## 6 Legal Text

As previously stated, this alternative looks to maintain the original baseline arrangements within the existing CUSC, with the exception of point (4) the selection of alternates and point (5) improving transparency. As such, the relevant sections of the legal text can be found below:

To add



**Matrix of alternatives**

		Proposal area					
		<i>Grouping Votes</i>	<i>Independent Model</i>	<i>Consecutive Terms</i>	<i>Alternates (Rota)</i>	<i>Transparency</i>	
<b>WACM</b>	1						Alternative 1 - withdrawn
	2						Alternative 2 - withdrawn
	3						Alternative 3 - withdrawn
	4						Alternative 4 - withdrawn
	5						Becomes Proposal - therefore withdrawn
	6						
	7						
	8						
	9						
	10						
	11						New Alternative proposed by Paul Mott

Key  Not Included  Included

- Grouping Votes – maximum of four votes per parent company.  
The number of votes should be limited to the number of distinct roles (i.e. the role for which each separate CUSC signatory is registered) attributed to CUSC signatories under each parent company. The four suggested roles are as follows: Generation; Interconnection; Supply; and Demand.
- Independent Model – two independent panel members to join the given elected members.  
Paid independent members would be selected to fill any perceived knowledge and experience gaps in the CUSC panel membership following the CUSC Panel Election.
- Consecutive Terms – limit of two consecutive terms of office allowed for panel members

A four-year consecutive term limit would be introduced so a Panel Member could only stand for two consecutive terms. Limiting the term to two consecutive terms increases the likelihood of securing wider views and backgrounds on the CUSC Panel and building a wider base of industry expertise year by year by developing a wider group of individuals with experience of serving on the CUSC Panel.

- Alternates (Chair) – selected by the chair rather than the absent panel member.  
The Panel Alternates should be selected by the CUSC Panel Chair based on the Chair's understanding of an Alternate member's expertise relevant to the modifications being considered.
- Alternates (Rota) – selected by a rota system rather than the absent panel member.  
In the scenario that an elected Panel Member is unable to attend a CUSC Panel meeting, a rotational approach should be used to determine which alternate Panel Member should be called to sit on the Panel.
- Transparency – improving transparency, including the publication of the outcomes of Panel Elections



Annex 9 - WACM Vote

Does the alternative option better facilitate the CUSC Applicable objectives when compared to the baseline? (i.e. what we have in the CUSC today)

The potential alternative must be supported by the majority of the Workgroup OR the Chair of the meeting if it is to be developed as a Workgroup Alternative CUSC Modification (WACM)

Member	UKPR Alternative 6	UKPR Alternative 7	UKPR Alternative 8	UKPR Alternative 9	UKPR Alternative 10	EDF Alternative 11
High level description of option						
<b>Supported by:</b> Yes, No Abstain						
Michael Jenner (Proposer)	Yes	Yes	Yes	Yes	Yes	Yes
Andy Colley	Yes	No	No	No	No	Yes
Mike Oxenham	Yes	Yes	Yes	No	No	Yes
Paul Mott	No	No	No	No	No	Yes
James Anderson	Yes	No	No	No	No	Yes
Lisa Waters ( <b>Vote given to MJ</b> )	Yes	Yes	Yes	Yes	Yes	Yes
Robert Longden						
Total	5 OUT OF 6	3 OUT OF 6	3 OUT OF 6	2 OUT OF 6	2 OUT OF 6	6 out of 6
Supported by Chair if applicable (yes / no)		YES	YES	YES	YES	
WACM Reference	WACM1	WACM2	WACM3	WACM4	WACM5	WACM6



Annex 9- Final Matrix of WACM's

		Proposal area				
		Grouping Votes	Independent Model	Consecutive Terms	Alternates (Rota)	Transparency
WACM	Alternative 1					
	Alternative 2					
	Alternative 3					
	Alternative 4					
	Alternative 5					
	Alternative 6	WACM 1				
	Alternative 7	WACM 2				
	Alternative 8	WACM 3				
	Alternative 9	WACM 4				
	Alternative 10	WACM 5				
	Alternative 11	WACM 6				

Alternative 1 - withdrawn

Alternative 2 - withdrawn

Alternative 3 - withdrawn

Alternative 4 - withdrawn

Becomes Proposal - therefore withdrawn

New Alternative proposed by Paul Mott - EDF Energy

Key  Not Included  Included

- Grouping Votes – maximum of four votes per parent company. The number of votes should be limited to the number of distinct roles (i.e. the role for which each separate CUSC signatory is registered) attributed to CUSC signatories under each parent company. The four suggested roles are as follows: Generation; Interconnection; Supply; and Demand.
- Independent Model – two independent panel members to join the given elected members.

Paid independent members would be selected to fill any perceived knowledge and experience gaps in the CUSC panel membership following the CUSC Panel Election.

- **Consecutive Terms** – limit of two consecutive terms of office allowed for panel members.  
A four-year consecutive term limit would be introduced so a Panel Member could only stand for two consecutive terms. Limiting the term to two consecutive terms increases the likelihood of securing wider views and backgrounds on the CUSC Panel and building a wider base of industry expertise year by year by developing a wider group of individuals with experience of serving on the CUSC Panel.
- **Alternates (Chair)** – selected by the chair rather than the absent panel member.  
The Panel Alternates should be selected by the CUSC Panel Chair based on the Chair's understanding of an Alternate member's expertise relevant to the modifications being considered.
- **Alternates (Rota)** – selected by a rota system rather than the absent panel member.  
In the scenario that an elected Panel Member is unable to attend a CUSC Panel meeting, a rotational approach should be used to determine which alternate Panel Member should be called to sit on the Panel.
- **Transparency** – improving transparency, including the publication of the outcomes of Panel Elections.

## 26 Annex 12: Code Administrator Consultation Responses

## CUSC Code Administrator Consultation Response Proforma

### CMP285 – ‘CUSC Governance Reform – Levelling the Playing Field’

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **16 January 2019** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com). Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its final determination.

These responses will be included in the Final CUSC Modification Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>James Anderson</i> <i>james.anderson@scottishpower.com</i>
<b>Company Name:</b>	<i>ScottishPower Energy Management Limited</i>
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p>For reference, the Applicable (standard) CUSC objectives are:</p> <ul style="list-style-type: none"> <li>(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;</li> <li>(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;</li> <li>(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and</li> <li>(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.</li> </ul> <p>*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).</p> <p>Although there is no evidence that the current election process is detrimental to competition, grouping the number of votes from each parent company may improve the perception of fairness and may marginally better facilitate competition (ACO b).</p>

	<p>The appointment of two independent (Salaried) Panel members increases the cost of administering the CUSC, will not necessarily improve the level of knowledge applicable to all the proposals during a Panel term and reduces the number of industry Panel Members. It potentially reduces competition (ACO b) and efficiency (ACO d).</p> <p>A limit of two terms on Industry Panel Members potentially reduces the pool of talent available to the Panel (recent Panel elections indicate this could exclude up to one third of interested candidates) and would potentially reduce the efficiency of administering the CUSC (ACO d).</p> <p>Publishing more detail on the outcome of Panel elections improves transparency and may better facilitate competition (ACO b). Maintenance of a register of Panel Members' financial interests in the industry would add an additional administrative burden on both the Code Administrator and Panel members and may deter some potential Panel members. Overall it is probably detrimental to efficiency (ACO d).</p> <p>The Original and Alternates are neutral against ACOs (a) and (c).</p> <p>On this basis only WACMs 1 and 6 overall better meet the Applicable CUSC Objectives than the current baseline.</p>
<p><b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b></p>	<p><i>Yes. If approved, CMP285 should be implemented in time to be effective for the CUSC Panel elections in 2019.</i></p>
<p><b>Do you have any other comments?</b></p>	<p><i>No.</i></p>

## CUSC Code Administrator Consultation Response Proforma

### CMP285 – ‘CUSC Governance Reform – Levelling the Playing Field’

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **16 January 2019** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com). Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its final determination.

These responses will be included in the Final CUSC Modification Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>Joshua Logan</i> <a href="mailto:Joshua.logan@drax.com">Joshua.logan@drax.com</a> 01757 612736
<b>Company Name:</b>	<i>Drax Power Limited</i>
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p>Drax support the proposals to:</p> <ul style="list-style-type: none"> <li>• Place parties into a voting group and limit the number of votes.</li> <li>• Improve transparency, including the publication of Panel Election results.</li> <li>• Alternate members being selected by a rota system rather than the absent panel member.</li> </ul> <p>We consider that these are the only necessary parts of the proposal required to rectify the defect and don't support any proposals that introduce additional requirements. As such, our preference is for WACM1.</p> <p><b>Standard Applicable CUSC Objective (d) – Positive (WACM1 and WACM6)</b></p> <p>Placing parties into a voting group will better facilitate the Standard Applicable CUSC Objectives. A voting system that fairly apportions the number of votes will ensure that members are elected in a way that represents the whole industry. We strongly support grouping CUSC parties together into a voting group and limiting the number of votes a that a voting group has. This change, along with additional transparency and the introduction of a rota scheme for selection of alternates, will resolve concerns that some companies have an unfair and disproportionate share of the votes. In this sense we believe that CMP285 promotes efficiency in the CUSC arrangements.</p>

	<p>We do not support the following elements of some of the proposals:</p> <ul style="list-style-type: none"> <li>• <b>Limiting the number of consecutive terms that panel members can serve</b> - this is unnecessary, if parties are placed in voting groups with a limited number of votes, this will ensure that the voting process is fair and representative of industry. If people were to be re-elected for consecutive terms this would reflect the desire of industry, restricting the number of terms panel members can stand for election will only limit the choice of candidates for parties to choose from, this goes against the principles of this modification.</li> <li>• <b>The arrangements to facilitate independent members</b> - we believe that reducing the number of panel members that industry can elect from seven to five goes against the principles of diversity and reduces the choice of nominees that industry can elect. We note Ofgem already has the power to appoint additional Panel Members.</li> </ul> <p>WACM1 and WACM6 don't propose the two changes highlighted above and as such both better facilitate the Standard Applicable CUSC Objectives compared to the Original and other WACMs. Our preference is for WACM1 which places parties into voting groups.</p>
<p><b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b></p>	<p>Yes, implementing changes in time to take effect for the 2019 CUSC Panel Elections is a sensible approach. We also support the non-retrospective approach whereby all the changes would come into effect without counting previous years members served on the CUSC panel.</p>
<p><b>Do you have any other comments?</b></p>	<p>Yes. Whilst we support parties being placed into voting groups, we do not believe that limiting the votes to a maximum of four based on what roles the signatories in the voting group have is the fairest approach. We believe that each voting group should have the same number of votes, in the BSC, every trading party or trading party group gets two votes, one for each account. Whilst this approach makes sense from a BSC perspective, from a CUSC perspective we think that the sensible approach is to limit the number of votes to one for each voting group. This will prevent situations that could be deemed inequitable where, for example, one voting group with 20 signatories that are all generators gets only one vote, whereas a voting group with four signatories, one for each party role, gets four votes.</p>

## CUSC Code Administrator Consultation Response Proforma

### CMP285 – ‘CUSC Governance Reform – Levelling the Playing Field’

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **16 January 2019** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com). Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its final determination.

These responses will be included in the Final CUSC Modification Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	James Jackson <a href="mailto:James.jackson@ukpowerreserve.com">James.jackson@ukpowerreserve.com</a>
<b>Company Name:</b>	UK Power Reserve
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p>UK Power Reserve believes that the original proposal best facilitates the Applicable CUSC Objectives.</p> <p>The proposal sets out a number of initiatives to increase the transparency and fairness of the process to elect CUSC Panel Members. In doing so, it prevents certain parties from holding a disproportionate influence over the election of Panel Members and we envisage will lead to a more diverse and representative panel.</p> <p>Firstly, through registering multiple subsidiary enterprises as CUSC signatories, some ultimate parent companies have been able to secure a significant number of votes in the CUSC Panel election (one CUSC signatory can cast one vote). This has created a disproportionate level of influence for a select few. The proposed grouping of subsidiaries within a single CUSC ‘parent company group’, along with the limited voting allocation – up to a maximum of 4 (taking into account the multiple distinct roles that CUSC parties operate under) – provides a more fitting mechanism than current arrangements and better represents the makeup of the CUSC and its signatories. This approach also aligns with the BSC approach of limiting votes for one party to two commensurate with the number of BSC party roles (generator and supplier).</p> <p>UKPR also hopes and expects that engagement will be improved amongst smaller parties, who will know that their CUSC Panel votes will count towards a greater percentage of the overall total.</p>



	<p>It is also crucial that the CUSC panel voting process is transparent, fair and representative of the views of the wider industry. Therefore, to ensure that the optimum consumer outcomes are reached, UKPR considers it necessary for independent Panel members to join with those that are elected. The proposal addresses this need via the independent CUSC Panel Member model whereby paid independent members are selected to fill any perceived knowledge and experience gaps in the CUSC panel membership following the CUSC Panel Election. Again, this approach falls in line with the BSC approach of appointing two independent members to the panel.</p> <p>Furthermore, the current approach of selecting alternate Panel Members is questionable in view of transparency and impartiality, given that Panel Members can select alternate members themselves. The introduction of a rota system to select alternates will ensure that neutrality is always maintained; increasing the level of trust in the process.</p> <p>In addition, the proposed limit on consecutive terms served increases the likelihood of securing a wider range of views and backgrounds on the CUSC Panel and will aid in building a wider base of industry expertise by developing a broader group of individuals with experience of serving on the CUSC Panel.</p> <p>Finally, the proposed changes to the nomination and voting process under Section 8A will further increase the level of transparency – as well as trust – in the voting process. The confirmation of voting groups in advance will provide assurance that the correct number of votes are being allocated to each party. Furthermore, the requirement to publish voting numbers for each CUSC candidate will allow CUSC parties to understand how many votes may be required to secure a place for their preferred candidate on the panel. This may also increase voting participation.</p>
<p><b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b></p>	<p>Yes. UKPR considers the proposed implementation approach to be suitable.</p> <p>It is vital that the recommended timeframes outlined in the workgroup report are adhered to in order for the necessary CUSC governance changes to be made ahead of the 2019 CUSC Panel elections.</p>
<p><b>Do you have any other comments?</b></p>	<p>We note that in the event that the original proposal is not deemed to best facilitate the objectives, UKPR has a preference amongst the various workgroup alternatives – WACM 2 (previously listed as UKPR alternative 7).</p>

	<p>We believe that this WACM, when compared to the other alternatives submitted, best addresses the primary defects of the panel and will ultimately enhance the independence and diversity of panel members, as well as ensure wider engagement from CUSC signatories.</p>
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3rd Floor North  
200 Aldersgate Street  
London EC1A 4HD  
Tel: 03000 231 231

[citizensadvice.org.uk](http://citizensadvice.org.uk)

**16 January 2019**

**Citizens Advice response to CUSC Code Administrator consultation: CMP285  
CUSC Governance Reform - Levelling the Playing Field**

Dear Shazia,

We are pleased to be able to respond to this consultation. Citizens Advice has statutory responsibilities to represent the interests of energy consumers in Great Britain. This document is entirely non-confidential and may be published on your website. If you would like to discuss any matter raised in more detail please do not hesitate to get in contact.

We welcome changes to CUSC Governance to provide transparency and to level the playing field between the larger and smaller CUSC parties.

We have outlined answers to the questions in the consultation below.

**Question 1: Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.**

We believe that WACM2 better facilitates Applicable CUSC Objectives:

- (b) - By providing more access to CUSC parties of a smaller size, this will level the playing field. It will enable CUSC Parties of any size to have a more equal say on the outcome of CUSC matters and therefore this should promote greater competition.
- (d) - The implementation and administration of CUSC arrangements will be improved by greater participation of a larger number of CUSC Parties. This should improve the diversity of views within the CUSC administration process.

As per [our response](#) to the Workgroup consultation, should the original proposal or any WACM which includes limiting consecutive terms of office for panel members (WACM 4 and 5) be implemented, there is a danger that collective corporate knowledge could be lost if the majority of panel members leave at the same time - which will be the case in 2019 as 5 of the current 7 members would be ineligible to stand for reelection.

Participating as an active member of the CUSC panel is time consuming and for smaller players this might be a reason not to put themselves forward for election. If

the modification fails to generate sufficient additional interest from potential new panel members then there might be a situation where there are not enough people who are nominated for the panel. In this event CUSC does not have a codified method to deal with this situation. We are not satisfied that this scenario has been adequately dealt with and therefore cannot support any proposal which includes limiting terms of office.

**Question 2: Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible**

We support the proposed implementation approach.

**Question 3: Do you have any other comments?**

It is important that implementation is achieved in time for the next round of CUSC panel elections in 2019.

I trust that this response is clear, but would be happy to discuss any matter raised within it in more depth if that would be helpful.

Yours sincerely

**Stew Horne**

Principal Policy Manager, Energy Networks and Systems

## CUSC Code Administrator Consultation Response Proforma

### CMP285 – ‘CUSC Governance Reform – Levelling the Playing Field’

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **16 January 2019** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com). Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its final determination.

These responses will be included in the Final CUSC Modification Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>Paul Jones</i> <a href="mailto:paul.jones@uniper.energy">paul.jones@uniper.energy</a>
<b>Company Name:</b>	<i>Uniper UK Ltd</i>
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p>The modification introduces some helpful aspects and some which would not be helpful.</p> <p><b>1. Grouping of votes</b></p> <p>We do not believe that this better meets the relevant CUSC objectives, namely working against objective d) and the efficiency of the CUSC arrangements.</p> <p>The grouping of votes proposal has come about as result of a perception of the voting system being dominated by a number of parties with significant numbers of votes each. The consultation document shows that in 2015 for instance 6 companies held 103 votes between them. However, this needs to be viewed in the context that those votes represented 21% of the possible 486 ballot papers issued that year. Therefore, they could not be seen as holding a dominant share of total votes, either individually or collectively. The present total number of votes has increased to 547. The reality is that very few ballots were cast in that election and this can therefore give the impression that there is dominance. The real challenge is to mobilise those others who did not vote. Additionally, work needs to be done to encourage more parties to put forward candidates to the election, as for several past elections insufficient numbers or nominations were received to require a vote to take place.</p> <p>What this proposal does do is increase the complexity of the voting arrangements, as work has to be carried out to identify voting groups and to allocate up to 4 votes to them, whilst it does not appear to meaningfully increase the ability of other parties to participate in the election process. There are also issues with the legal text proposed to achieve this. We comment on these in</p>

the further comments section.

## **2. Independent model**

We do not believe that this better meets the relevant CUSC objectives, also working against objective d).

Presently, all CUSC panel members are required to act independently when carrying out their duties under section 8.3.4 of the CUSC. The proposal to introduce paid independent members would add a significant cost to the process for little if no apparent benefit. Additionally, it is not clear why replacing elected members with unelected ones appointed by National Grid would improve the election process, as it seems an intrinsically undemocratic move. Furthermore, the legal text for this element of the proposal makes it clear that an unelected member would be appointed if "*such person's interests reflect the interests of a class or category of CUSC Party whose interests are not reflected in the composition of Panel Members*" appointed through the elected process. This seems to contradict the principle that Panel Members are not there to reflect their interest or those of their employers, as required by 8.3.4 of the CUSC.

## **3. Consecutive terms**

We do not believe that this better meets the relevant CUSC objectives, also working against objective d).

The proposal to prevent more than two consecutive terms would be sensible if there was evidence that parties were putting forwards candidates for election, but that the election process was preventing them from being elected. However, this does not appear to be the case. In fact, historically parties have tended to put insufficient numbers of candidates forward for election, meaning that voting has not needed to take place. Recently, as more controversial and higher impact modifications have been progressed under the CUSC, interest in the CUSC Panel and the modification process has increased. This is positive and should be encouraged further.

However, we are concerned that the consecutive terms provisions in this proposal could actually work against encouraging sufficient candidates to be brought forwards, if some are automatically prevented from doing so in this manner. We also have some concerns about the legal text drawn up for this element which we detail in the further comments section.

## **4. Alternates**

We think this element does better meet the applicable CUSC objectives and better promotes objective d) in particular.

This proposal seems sensible as it simply formalises the current working practice. However, there are some issues with the legal

	<p>text proposed which we detail in the further comment section below.</p> <p><b>5. Transparency</b></p> <p>We fully support the proposals to provide greater transparency in the election process, including publishing details of the election results such as the numbers of votes received by individual candidates and the affiliations of panel members and alternates. This should help instil trust in the election process. This should better promote objective d).</p> <p>Based on the above, we believe that WACMs 1 and 6 overall better meet the applicable objectives. We do not believe any of the other proposals better meet the objectives. WACM 6 is the best option.</p>
<p><b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b></p>	<p>If the proposal is to be implemented then this appears sensible.</p>
<p><b>Do you have any other comments?</b></p>	<p>Yes, there are a number of potential issues regarding the detail of what is being proposed.</p> <p><b>1. Grouping votes</b></p> <p>The legal text in 8A.1.1.6 covers the obligations for parties to report errors in the list of voting groups and requires that Users should use “best endeavours” to do so, whilst National Grid has only to use “reasonable endeavours” to investigate and correct them. Best endeavours is a specific and onerous legal requirement which is disproportionate for these circumstances. It also seems somewhat one sided when National Grid’s requirements are less onerous.</p> <p>8A.3.1.3 and 8A.3.1.4 as drafted seems unclear. 8A.3.1.3 is clear that each voting group has a maximum of 4 votes. However, 8A.3.1.4 could be read to imply that each user in the voting group has one vote per category to which it belongs, which is then capped for the voting group at 4 votes.</p> <p>So, for example a voting group could have two parties which are both suppliers and generators, which would each attract 2 voting papers, one for each category. This would mean a total of 4 votes. Alternatively, the requirements could be read to mean that the parties between them would only have one vote per category, so in this instance 2 votes, although this would seem to make the requirement for the 4 vote cap in 8A.3.1.3 redundant. This section should be made more explicit about how this would</p>

work.

## **2. Consecutive terms**

In 8.5.1 there is a limit on consecutive terms for elected Panel Members and unelected Independent Members, but not for any other appointed members. If the purpose of this is to introduce new perspectives and ideas, then the requirements should extend to all voting members.

8.5.2 prevents Panel Members who serve two consecutive terms from being eligible for appointment for a period of one term. However, it is not clear whether such a Panel Member could seek appointment as an Alternate Member instead for that term and, if so, the basis on which this would happen.

## **3. Alternates**

8.7.2 in the legal text details how Alternates would be appointed to act on behalf of an absent Panel Member for a particular meeting. This is on a rota basis, but if there are not enough Alternates to cover the total number of absent regular members, it makes provision for the rota to start again so that an Alternate may hold more than one vote. This second round of the rota should also include regular Panel members too. Otherwise, in a situation with a low number of Alternates, one or more Alternate members could end up holding three or more votes for a meeting whereas the regular Panel members in attendance would be restricted to only one. The present drafting of 8.7.5 a) ii) mentions a situation where an Alternate is also a Panel Member. This can't happen under the present drafting unless the above change is made.

8.7.5 b) i) states that an Alternate member who has been appointed as an alternate for a particular meeting, will cease to be appointed if the Panel Member who they are acting on behalf of ceases to be a Panel Member. This is a clause from when Alternates were appointed by Panel Members themselves and does not make sense in this context. It should be removed.

8A.4.2.1 details arrangements in the event that a Panel Member resigns before the end of their term of service. It outlines that an Alternate would be appointed on the basis of a rota. This would seem to imply that Alternates would take it in turn to cover for the resigned Panel Member until the next election, but it reads as if one Alternate would be chosen to act as the new Panel Member for the whole period. This is backed up by the provisions of 8A.4.2.2 that the Alternate Member chosen to be the new Panel Member will then become a Resigning Alternate Member. How would this rota be drawn up to ensure fair treatment of Alternate Members?



It would seem more sensible to use the provisions of 8A.4.3, used for all other circumstances for the removal of a Panel member, instead. This appoints the Alternate Member who had the highest number of votes in the original election.

A similar provision is contained in paragraph 8A.4.5.2 in respect of Independent Members. Again, the rota system does not seem to make sense in this context.

## CUSC Code Administrator Consultation Response Proforma

### **CMP285 – ‘CUSC Governance Reform – Levelling the Playing Field’**

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **16 January 2019** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com). Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its final determination.

These responses will be included in the Final CUSC Modification Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>Mike Oxenham</i>
<b>Company Name:</b>	<i>National Grid Electricity System Operator</i>
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p>We previously supported the original proposal, but we believe the risk of not having adequate numbers and/or experience on the Panel in future as the result of the proposed limit on panel member tenure has not been suitably resolved and so remains a material concern. On balance, however, we believe there are merits in all other components of the original proposal and as such we support those WACMs which do not have the tenure limit component included - we believe each will further Applicable CUSC Objectives (a) and (d) due to the removal of those actual and/or perceived barriers in the election process and so the expected increase in the engagement of both smaller parties and newer entrants and potentially in the resulting panel composition. We believe that alongside the introduction of independent panel members this will provide more diversity in the overall panel experience and should therefore lead to more efficient outcomes.</p> <p>Therefore, we believe that WACM1, WACM2, WACM3 and WACM6 all better facilitate the applicable CUSC objectives with WACM2 being our preferred WACM as it is the closest to the original proposal but without the component which remains a concern as above.</p>
<b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b>	Yes.
<b>Do you have any other comments?</b>	We have no further comments at this stage.

**CMP285 – ‘CUSC Governance Reform – Levelling the Playing Field’**

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These responses will be included in the Final CUSC Modification Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>Andrew Colley    andrew.colley@sse.com</i>
<b>Company Name:</b>	<i>SSE plc</i>
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p>SSE do not believe that the original proposal better facilitates the Applicable (CUSC) objectives.</p> <p>In particular, SSE are concerned that the proposal to limit the term of office to achieve a wider engagement, whilst well intentioned, assumes a level of interest in performing the role that will not always exist. As such it increases the risk that a Panel cannot be convened, particularly during periods of relative stability with lower impact change where interest to serve on Panel may well be reduced. Additionally, there is a greater risk that collective Corporate memory of the Panel reduces over time due to this limitation, thereby reducing the efficiency of the Panel over time.</p> <p>SSE do not agree therefore that there should be any limitation to term of office if candidates are willing, fit and able to perform the prescribed duties.</p> <p>Equally SSE are concerned that the proposal aims to replace a fully democratic, elected process with an appointed process for two Panel members, which will increase costs as the new model will require appropriate remuneration. It is not obvious to us that appointed members offer greater knowledge than elected members. It is not obvious to us that appointees are able to exercise their independent judgement on each specific technical and detailed subject matter forming Panel business, any more effectively than elected members. SSE note that a mechanism (unused) already exists that would allow the regulator to appoint an additional Panel member with specific skill sets/experience</p>

	<p>where it felt the need to (noting that such an appointee would still be required to exercise independent expert opinion on each subject matter).</p> <p>SSE do not agree therefore that it is necessary to replace an elected process with an appointed process and do not support the “independent” model proposed.</p> <p>SSE believe that both aspects of the proposed solution described above are detrimental to ACO (d). SSE do not support the original proposal, WACM2, WACM3, WACM4 nor WACM5 therefore, as all contain one or both of these features.</p> <p>SSE are supportive of other aspects of the proposed solution, which improve transparency (publish outcome of voting) and reduce perception of bias (introduction of rota for use of Alternates), both of which are positive against ACO (d).</p> <p>SSE are therefore support WACM6 which we believe better facilitates ACO (d)</p> <p>SSE also support the proposal to group and cap the number of votes that each Corporate entity can exercise, as it will limit any perception that undue power and influence can be brought to bear by larger market participants who control multiple CUSC signatories.</p> <p>SSE therefore support WACM1, which very marginally better facilitates ACO (b) and is an improvement against ACO (d).</p> <p>SSE therefore support both WACM1 and WACM6, with a preference for WACM1.</p>
<p><b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b></p>	<p>Yes</p>
<p><b>Do you have any other comments?</b></p>	<p>No</p>

## CUSC Code Administrator Consultation Response Proforma

### CMP285 – ‘CUSC Governance Reform – Levelling the Playing Field’

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **16 January 2019** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com). Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its final determination.

These responses will be included in the Final CUSC Modification Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	<i>Andrew Sherry</i> <a href="mailto:Andrew.Sherry@enwl.co.uk">Andrew.Sherry@enwl.co.uk</a>
<b>Company Name:</b>	<i>Electricity North West</i>
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p>For reference, the Applicable (standard) CUSC objectives are:</p> <ul style="list-style-type: none"> <li>(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;</li> <li>(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;</li> <li>(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and</li> <li>(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.</li> </ul> <p>*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).</p> <p><i>We do believe that the implementation of CMP285 will better facilitate Applicable CUSC Objectives (b) and (d) and we have a preference for WACM2 as this contains the necessary elements that will aid reform which will ultimately benefit consumers.</i></p> <p><i>Change is proposed in the following areas:</i></p>

	<ul style="list-style-type: none"> <li>• <i>The grouping of votes</i></li> <li>• <i>The introduction of independent panel members</i></li> <li>• <i>Limit on the number of consecutive terms</i></li> <li>• <i>Alternates on a rota basis</i></li> <li>• <i>Improving transparency.</i></li> </ul> <p><i>We support these elements apart from the restriction on consecutive terms as we believe there is a benefit from continuity and the expertise built up over multiple terms, particularly as these are elected representatives and part of this proposal is the inclusion of independent members to provide more balance to the panel.</i></p> <p><i>The grouping of votes and provision of a rota to cater for alternates attending meetings does seem reasonable and pragmatic.</i></p> <p><i>As there is an intention to promote the CUSC and ensure parties feel a sense of inclusion improving the transparency of processes involved will certainly aid that objective.</i></p>
<p><b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b></p>	<p><i>We do support the implementation approach.</i></p>
<p><b>Do you have any other comments?</b></p>	<p><i>While we think this change is beneficial it may be that wider reform would be useful and note that BEIS / Ofgem are undertaking a review of energy network codes.</i></p>



## CUSC Code Administrator Consultation Response Proforma

### CMP285 – ‘CUSC Governance Reform – Levelling the Playing Field’

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **14<sup>th</sup> February 2019** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com). Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its final determination.

These responses will be included in the Final CUSC Modification Report which is submitted to the CUSC Modifications Panel.

**The first Code Admin Consultation (CAC) was issued in December 2018. Following some feedback received, amendments have been made to the legal text to help provide clarity. Therefore, this CAC is for a reduced 5-day period and is specifically asking about the legal text changes. For ease to identify the changes they are tracked within the legal text.**

<b>Respondent:</b>	<i>ESB GT Regulation Team</i> <i>+44 (0)20 7544 8632</i>
<b>Company Name:</b>	<i>ESB</i>
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p><b>For reference, the Applicable (standard) CUSC objectives are:</b></p> <p><b>(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;</b></p> <p><b>(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;</b></p> <p><b>(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and</b></p> <p><b>(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.</b></p> <p><b>*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).</b></p> <p>ESB believes that the original and the alternatives all better facilitate the applicable CUSC objectives. Positive impact on A and B.</p>



<b>Do you agree with the revised legal text?</b>	No Comment
<b>Do you have any other comments?</b>	<p>We do not support the introduction of paid independent panel members. We believe that this would add to unnecessary costs to CUSC signatories and is impractical to implement. ESB is concerned that this measure might lead to the panel having 'independent panel members' whose motivations are different and not in the interests of CUSC signatories necessarily.</p> <p>We agree with consecutive terms being introduced; however more than the two consecutive terms should be allowed if there isn't sufficient members on the panel.</p> <p>Our preference is for WACM 5.</p>

## CUSC Code Administrator Consultation Response Proforma

### CMP285 – ‘CUSC Governance Reform – Levelling the Playing Field’

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **14<sup>th</sup> February 2019** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com). Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its final determination.

These responses will be included in the Final CUSC Modification Report which is submitted to the CUSC Modifications Panel.

**The first Code Admin Consultation (CAC) was issued in December 2018. Following some feedback received, amendments have been made to the legal text to help provide clarity. Therefore, this CAC is for a reduced 5-day period and is specifically asking about the legal text changes. For ease to identify the changes they are tracked within the legal text.**

<b>Respondent:</b>	<i>Andrew Sherry</i> <a href="mailto:Andrew.Sherry@enwl.co.uk">Andrew.Sherry@enwl.co.uk</a>
<b>Company Name:</b>	<i>Electricity North West</i>
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p><b>For reference, the Applicable (standard) CUSC objectives are:</b></p> <p><b>(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;</b></p> <p><b>(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;</b></p> <p><b>(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and</b></p> <p><b>(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.</b></p> <p><b>*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).</b></p> <p><i>We believe that the increase in transparency together with the potential improvements in engagement as a result of the implementation of CMP285 will better facilitate Applicable CUSC Objective (d).</i></p>

<b>Do you agree with the revised legal text?</b>	<i>We believe that the legal text delivers on the intent of each of the proposed change proposals.</i>
<b>Do you have any other comments?</b>	<i>There was quite a lot of documentation to go through, for a turnaround of 5 working days, particularly for any parties that have only been able to review at this stage, so it may have been useful for a short summary to have been included.</i>



Trisha McAuley  
CUSC Panel Chair  
c/o National Grid Electricity  
System Operator Limited  
Faraday House  
Gallows Hill  
Warwick  
CV34 6DA

Email: [industrycodes@ofgem.gov.uk](mailto:industrycodes@ofgem.gov.uk)

Date: 17 April 2019

Dear Trisha,

**Authority decision to send back CUSC modification proposal CMP285 'CUSC Governance Reform – Leveling the Playing Field'**

On 12 March 2019, the CUSC Panel submitted a Final Modification Report (FMR) for CUSC modification proposal CMP285 'CUSC Governance Reform – Leveling the Playing Field' to the Authority.<sup>1</sup>

We have decided that we cannot form an opinion on CMP285 based on the FMR as submitted. We therefore direct that the FMR is revised and resubmitted to take into account our concerns.

We have identified the following deficiencies in the FMR:

1. The description of the modification is unclear. Whilst there is reference to the original proposal in the FMR and the discussions that were had at different stages, there is no clear explanation of what is included overall.
2. The anticipated effect of introducing group voting is not fully explained. Nor is it explained as to how the Modification will encourage higher engagement in the voting process.
3. The process of how the Code Administrator will publish a list of Users and their Voting Groups is not clear. The FMR refers to ultimate parent companies declaring all CUSC Signatories under their direct or indirect control, and this being published as part of the CUSC signatory list. This is not included in the legal text and we therefore assume that this is no longer part of the Proposal. Please clarify.
4. The process of appointing independent panel members is not clear. In particular, the legal text and FMR are inconsistent on the role of the Panel Chair and the Authority. The FMR refers to the importance of the term 'independent', but the definition in the Code is circular. The arrangements around remuneration of independent panel members is also not explained in the Code.
5. It is not clear to us that the discussions, as set out in the FMR, around requirements to provide information in respect of interests in CUSC parties is correctly reflected in the legal text. More clarity on this would be welcome.

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<sup>1</sup> <https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/cusc-governance-reform-leveling-playing>

6. The legal text does not reflect, in all areas, the proposals set out in the FMR. We attach at Appendix 1, a table setting out our concerns.

We therefore direct that additional steps are undertaken to address these concerns. A revised FMR should –

1. Provide us with a clear description of the individual elements of the modification, (specifically; grouping votes, independent model, consecutive terms, alternates, transparency) and explain what each element of the modification is seeking to achieve.
2. Provide in more detail the anticipated effect of introducing group voting; and how it is envisaged that the modification will encourage higher engagement in the voting process.
3. Clarify the process around the appointment and reappointment of independent panel members and clarify what is envisaged with respect to the remuneration of the member.
4. Clarify the requirement on Panel members to provide information about interests in other CUSC parties and to whom this requirement will apply to and its effect.
5. Respond to the issues raised at Table 1 below.

We require the above information in order that we can assess: (a) whether the proposed Modification better facilitates the Applicable CUSC Objectives; and (b) whether what is intended is reflected in the legal text.

After addressing the issues discussed above, and revising the FMR accordingly, the CUSC Panel should re-submit it to us for decision as soon as practicable.

Yours sincerely,

**Lesley Nugent**  
**Deputy Director, Licensing Frameworks**

**Table 1**

<b>Option</b>	<b>Issue</b>
Group voting	We note from the FMR that there was some discussion around how CUSC Signatories are to be grouped together. It is not clear from the FMR which approach was preferred, but we assume from the draft legal text that the concept of Affiliate (by reference to definitions in the Companies Act 1985) is what is proposed <sup>2</sup> . Please confirm.
Group voting	The definition of 'affiliate' in section 11 does not apply in respect of group voting. We understand that the intention is that it should.
Group voting	8A.3.1.5(b) refers to the CA selecting voting papers at random. Further detail on this would be helpful.
Alternates	<p>The drafting at para 8.7.5 is unclear. It could apply to all Alternates or the Alternate that will attend the Panel meeting.</p> <p>We also note that there is discussion in the FMR of Alternates remaining engaged in the Panel so that they can actively contribute when required. However, this is not reflected in the legal text so we assume that this approach is not part of the modification proposal. Please confirm.</p>
Alternates	It is unclear to us why 8.7.5(b)(ii) has been limited to only 'Other Panel Members'.

<sup>2</sup> The draft legal text refers to 'Affiliate' which adopts the definition set out in the (now repealed) Companies Act 1985. We note that this definition includes companies with majority voting rights in a subsidiary, as well as companies that have the right to appoint or remove a majority of the subsidiary board members, and / or is able to control the voting rights in a subsidiary.





**Provide us with a clear description of the individual elements of the modification (specifically; grouping votes, independent model, consecutive terms, alternates, transparency) and explain what each element of the modification is seeking to achieve.**

This response relates to the Original legal text as it is inclusive of all elements of the overall proposal. Each of the WACMs has variations of this legal text depending on the specific individual elements of the proposal which are included within that particular WACM. Where a discrepancy between the Final Modification Report (FMR) and legal text has been identified, we have clarified that the legal text prevails in those instances.

Please note that since CMP285 was originally raised by the Proposer the proposal has been further amended under proposer ownership based on feedback from both the workgroup and the industry. Therefore, what is referred to as the Original throughout is different from what was originally raised by the Proposer e.g. the cap of votes has reduced from a maximum of five votes to a maximum of four votes.

The following table is based on Annex 9 of the FMR and depicts elements of the Original proposal (i.e. as described above) and so the building blocks for each of the WACMs.

	Grouping Votes	Independent Model	Consecutive Terms	Alternates (Rota)	Transparency
Original					
WACM1					
WACM2					
WACM3					
WACM4					
WACM5					
WACM6					

In summary, the various elements listed above are:

- Grouping Votes – grouping Users based on their respective function with a maximum of four votes allocated for each ultimate parent company noting the definition of Affiliate.
- Independent Model – the appointment of (with the approval of the Authority) two Independent Members to the panel in place of two user elected panel members.
- Consecutive Terms – a consecutive limit of two terms being applied to those Panel Members elected by Users and appointed Independent Members.
- Alternates (Rota) – ensuring that Alternate Members are selected via a rota system.
- Transparency – includes publishing the results of voting and the election process.

A fuller description of each of the above elements alongside references to the most substantive sections of the associated legal text (also based on Annex 9 of the FMR) is as follows.

The views of the Proposer are also noted alongside some of the differing views of the Work Group; the voting of the Work Group under Section 8 of the FMR also demonstrates the individual views of the Work Group members on the Original and each of the WACMs.

### *Grouping Votes*

This involves allocating each User to a Voting Group. This means that each User will be placed in the same Voting Group as other Users who are under the same ultimate parent company, as per the definition of Affiliate. So, each Voting Group (and therefore each ultimate parent company) will in future have a maximum number of four votes (i.e. one for each relevant Voting Sub-Group) rather than having one vote per User irrespective of those Users potentially having multiple Affiliates and therefore more than four votes as is presently the case.

According to the Proposer this element of the proposal is seeking to prevent 'large industry players from securing overwhelming and insurmountable dominance during the CUSC panel voting process' as per the 2<sup>nd</sup> paragraph of 'What' in Section 2 of the FMR. It will create an element of cross-code consistency between CUSC and BSC as discussed in Part 1(a) and Part 1(c) of Section 5 of the FMR.

These sections also highlight (as do the voting statements under Section 8 of the FMR) other views from the Work Group, some of which are supportive of this proposed element whilst other are not – this includes a reflection on whether current arrangements remain more appropriate. For example, the complexity of organisations could mean they do not always act in line with their group structure.

Changes in Section 8A.1.1, Section 8A.3.1 and Section 8A.3.2 (and Section 11 for defined terms) refer in respect of grouping votes as above.

### *Independent Model*

This involves the appointment of (with the approval of the Authority) two Independent Members by and at the expenses of The Company, in a similar manner to the appointment of the Panel Chairman. Independence in this context being defined in accordance with Paragraph 8.4.3. The two members appointed as Independent Members will be in place of two existing user elected Panel Members.

According to the Proposer this element of the proposal (as per the "Why" in Section 2 of the FMR) is seeking to reduce the risk of the Panel being perceived to be 'less independent, less representative of the diverse energy industry and less able to deliver the best outcome for consumers'. As such, reform is expected to increase 'consumer perception of the independence of the panel' and so will mitigate the risk of the industry being brought into disrepute as above. This will introduce another element of cross-codes consistency between the CUSC and BSC in respect of the panel having two independent members. This is further discussed in Part 1(j), Part 1(k) and Part 1(l) of Section 5 of the FMR.

These sections also highlight (as do the voting statements under Section 8 of the FMR) other views from the Work Group, some of which are supportive of this proposed element whilst other are not – this includes concerns about the associated reduced technical knowledge and the increased costs, and a belief there is a lack of evidence on the benefits of Independent Members, as well as a view that Ofgem can (if required) already appoint an additional Panel Member under Paragraph 8.4.3.

Changes in Section 8.3, Section 8.4, Section 8.6 and Section 8A.2.2.3 refer in respect of the independent model as above.

### *Consecutive Terms*

This involves a consecutive limit of two terms being applied to Panel Members elected by Users and appointed Independent Members. So, if such a Panel Member has served two consecutive terms, they will be ineligible for election/appointment as a Panel Member for a period of one term, but they can be still elected as an Alternate Member; this change will only apply prospectively from the implementation date i.e. counting of terms served will only consider those terms following the implementation date.

According to the Proposer this element of the proposal is seeking to reduce the dominance of larger industry players who are able to take advantage of the current voting process to ensure continued and long-term membership on the Panel. This is expected to result in greater panel diversity and so 'securing wider views and backgrounds on the CUSC Panel and building a wider base of industry expertise year by year by developing a wider group of individuals with experience of serving on the CUSC Panel' as discussed in Part 1(i) of Section 5 of the FMR.

These sections also highlight (as do the voting statements under Section 8 of the FMR) other views from the Work Group, including concerns about an increased risk of governance issues through not having sufficient Panel Members in future, as well as a loss of continuity and knowledge.

Changes in Section 8.5 (with further consequential changes in Section 8A.2 and Section 8A.3) refer in respect of consecutive terms as above.

### *Alternates (Rota)*

This related to Alternate Members (Panel Members appointed by Users and Independent Members) being appointed via a rota system rather than utilising the previous practice whereby alternates had been selected by the Panel Member who will be absent from a CUSC panel meeting. As an aside this approach is currently Code Administrator custom and practice albeit not currently being codified.

According to the Proposer this element of the proposal is seeking to increase independence and diversity in the CUSC Panel as a rotational approach is expected to act as a more robust process. The Proposer views that this will remove the possible perception that voting can be unduly influenced. Furthermore, it provides a relatively simple transition given that the approach is generally used for the CUSC Panel in the event that an elected Panel member is unable to attend as further discussed (including the provision of Work Group views) in Part 1(f) of Section 5 of the FMR.

Changes in Section 8.7 refers in respect of alternate (rota) as above.

### *Transparency*

This involves the publication of an election report by the Code Administrator upon conclusion of the election process and includes a provision that the number of votes received by each person standing for election will be published. This is based on similar details in the Balancing and Settlement Code.

According to the Proposer this element of the proposal is seeking to drive engagement from smaller parties who do not necessarily have the resources to research the results of the CUSC Panel election process or the background of CUSC Panel members. Transparency will demonstrate to the industry the number of votes that are needed to secure a place on the CUSC Panel.

This could also encourage new candidates, especially if the votes for some panel places are seen to be low enough to be attainable, especially if the limiting of votes as put forward by a 'grouping of votes' model is in place. Increased transparency is also expected to ensure the voting process, and subsequent composition of the CUSC Panel, is seen to be fair and representative of the views of wider industry as per the "detail on why change" paragraph from Section 2 of the FMR and as further discussed (including the provision of Work Group views) in Part 1(f) of Section 5 of the FMR.

Changes in Section 8A.3.6 refer in respect of transparency as above. Additionally, common changes across the Original and WACMs which relate to Transparency include additional declarations under Paragraph 8.3.4(e) and a link to candidate nomination under Paragraph 8A.2.2.6.

According to the Proposer the additional declarations (in relation to any aggregated shareholding) will further aid the demonstration of independence and transparency relating to the elected Panel Members under Paragraph 8.3.4(a). The Proposer believes that including such additional obligations increasing transparency of Panel Member's interests in CUSC parties brings the arrangements in line with some of the best practice within the BSC.

**Provide in more detail the anticipated effect of introducing group voting; and how it is envisaged that the modification will encourage higher engagement in the voting process**

According to the Proposer this element of the proposal will encourage smaller companies to engage in the Panel voting process as their votes will count towards a greater percentage of the overall total votes when compared to the current arrangements. It will give the potential for greater diversity of backgrounds on the CUSC Panel, meaning smaller, more recently created industry parties in CUSC (such as those who are distribution-connected or with new disruptive business models) will have increased confidence in the expertise, independence and representation of the CUSC Panel. This increase in transparency and representation is expected to drive engagement in the wider CUSC process as per Part 5 and Part 6 of Section 5 of the FMR.

The introduction of group voting also brings arrangements into closer alignment with other codes, notably a BSC approach of limiting votes for one party (i.e. parties under the same parent company) to two commensurate with the number of BSC party roles i.e. generators and suppliers.

The Proposer view is that in democratic systems, voter apathy is a concept that is well understood and some voters do not exercise their voting rights because they do not believe their votes will affect the outcome. The proposer argues that this is currently the case with the CUSC voting process and because of the dominance of the largest parent companies who hold many CUSC election votes (i.e. well over 20 votes for the largest companies as shown in the proposal analysis) smaller players do not believe their single vote can affect the outcome and they therefore do not engage with the CUSC election process. The Proposer believes that these proposals would increase transparency and limit the overwhelming election dominance of the largest companies (as described above) which would then lead to increased participation and engagement from small companies.

As above, some of the Workgroup did not support Grouping Votes; the Work Group discussion is noted in in Part 1(a) and Part 1(c) of Section 5 of the FMR, and the respective voting statements of the Work Group can be found in Section 8 of the FMR.

With regard to further clarity being requested on the publication of a list of Users and Voting Groups by the Code Administrator, Section 8A.1.1.4 details the obligation; the means of publication will be determined by the Code Administrator in due course. Section 8A.1.1.5 and Section 8A.1.1.6 detail obligations in relation to collation and correction (if required) of the list of Users and Voting Groups.

**Clarify the process around the appointment and reappointment of independent panel members and clarify what is envisaged with respect to the remuneration of the member.**

Other than as provided for in Section 8.3, Section 8.4, Section 8.5 or Section 8A.4.5, the legal text is intentionally silent on a process for appointing/reappointing Independent Members, including their remuneration. The detail included in the legal text in this regard is of a similar level of detail to the Panel Chairman arrangements in respect of appointing/reappointing, and remuneration. A notable exception relating to the appointment of the Panel Chairman is as per Paragraph 8.4.1(a) whereby a 'particular regard to the views of the CUSC Modifications Panel' is stipulated.

Therefore, the process for appointing/reappointing Independent Members, and their remuneration, will be at the discretion of The Company but with the Authority ultimately approving as per Paragraph 8.4.3. The Proposer believes this discretion is designed to allow The Company to hold the necessary flexibility to secure the best possible candidates to fill the positions. As with the process for appointing the Panel Chairman, The Company expects to (whilst not codified) consult with all Panel Members on the recruitment and selection process at the appropriate time. This could, for example, include Panel Members and the Panel Chairman being involved in the interview process.

In respect of remuneration, The Company expects to incur costs at a suitable market rate for the roles in question for the remaining RIIO-T1 period and with the costs thereon being addressed through the ongoing RIIO-2 development process.

The legal text for the Original and WACMs documents these arrangements at an adequate level of detail to reflect the output from the Workgroup for both the Original and WACMs.

With regard to the definition of an Independent Member, such definition can be found in Section 11. This definition cross-refers to Paragraph 8.3.1(b)(vi), Paragraph 8.4.2(d) and then Paragraph 8.4.3. Paragraph 8.4.3 ultimately then sets out the independence criteria which shall first be demonstrated prior to a person being considered to be an Independent Member.

**Clarify the requirement on Panel Members to provide information about the interests in other CUSC parties and to whom this requirement will apply to and its effect**

As per Paragraph 8.3.4 and Paragraph 8A.2.2.6 this applies to those Panel Members listed under Paragraph 8.3.4(a) with the effect being that such Panel Members (or Alternate Members) elected by Users under Paragraph 8.3.1 or 8.7.2, those appointed by the Authority under Paragraph 8.4.4 or the Panel Chairman appoints under Paragraph 8.4.1, must make additional declarations in respect of their role as a Panel Member.

This additional information will be published by the Code Administrator in accordance with Paragraph 8.3.4(b) and the manner and location in which it will be published is yet to be determined.

In accordance with Section 8A.2.2.6 this additional information shall also be given by nominated candidates for any election of User’s Panel Members, and this information will then be published by the Code Administrator alongside the list of nominated candidates. Failure to give such information will make the nominated candidate ineligible to stand in the election under Section 8A.2.2.6.

**Respond to the issues raised at Table 1 below**

Table 1

Option	Issue	Response
Group Voting	‘We note from the FMR...’	The legal text accurately reflects the preferred position of the Proposer i.e. that each Voting Group shall be made up of all Affiliates (as per Section 11) which are eligible to vote.
Group Voting	‘The definition of...’	<p>Each Voting Sub-Group (i.e. Demand, Generation, Interconnector and Supply) is defined in Section 11 by reference to the "User(s) in a Voting Group" which fall into that category. As the definition of Voting Group (see Section 8A.3.1.2) already includes a reference to Affiliates, this has not been repeated in the Voting Sub-Group definitions.</p> <p>We have however noticed that a reference to Section 8A.3.1.2 could have ideally been included in the definition of "Affiliate" to ensure that the definition is more clearly capable of applying to Users in this specific context. Notwithstanding this point we believe the legal text as drafted is arguably sufficiently clear in respect of Affiliates under Section 8A.3.1.2.</p>
Group Voting	‘8A.3.1.5(b) refers to...’	In the event the situation foreseen under this Paragraph occurs the process to select at random is yet to be determined by the Code Administrator. The Code Administrator expects that it will be through some form of software to enable true randomisation.
Alternates	‘The drafting at para...’	<p>This section is intended to apply to an Alternate Member who has been selected to act as alternate i.e. under Section 8.7.2(c) or Section 8.7.3. We believe the wording is unambiguous as to this point as it refers to "where an alternate has been selected" and not to "Alternate Members" who will have been elected under Section 8.7.2(a).</p> <p>With regard to additional provisions relating to increased engagement by Alternate Members there is no legal text specific to this element of the FMR and this accurately reflects the position of the Proposer.</p>
Alternates	‘It is unclear to us...’	It is intentional that the drafting in Paragraph 8.7.5(b)(ii) applies only to alternates for "other Panel Members" and not to Alternate Members who will be selected from a rota to act for elected Panel Members and Independent Members. This is because the same provisions of Paragraph 8.6.1(b) already apply to Alternate Members by virtue of the introductory wording of Paragraph 8.6.1, which includes reference to "an Alternate Member".