

Governance Standing Group Report

For the CUSC Panel on 29th July

The GSG met on Tuesday 12th July and focussed on identifying the issues and possible amendments to the CUSC which stemmed from consideration of the new Appeal arrangements being put in place by the DTI and the Competition Commission. There were 5 issues identified, which were:

1. Need for CUSC Panel Members to provide a recommendation on the Amendment Proposal within the Amendment Report, to allow comparison with the Ofgem decision.
2. Possible need for a majority decision to be made by Panel Members on each Amendment Proposal.
3. What process needs to be followed if an Appeal is upheld?
4. Should there be sufficient time given between an Ofgem decision and implementation to allow time for an Appeal to be granted.
5. Should the Amendment Report indicate whether there is a Security of Supply issue.

The outcome of the discussion was that:

1. There appeared to be a change in the role of CUSC Panel Members, as a result of the proposed Appeal arrangements. CUSC Panel Members were now being asked to make a definitive statement of their position with regards each CAP. This will serve as the test, against which Ofgem's decision will be judged as to whether it could be appealable, and it needed to be reflected in the CUSC. (New CUSC para required)
2. It was further agreed that the Panel Members did need to see and discuss the Final Amendment Report together and that this should be at a CUSC Panel Meeting. Each Panel Member would then vote as to whether or not they would support the Amendment Proposal. The giving of support will depend upon the weight of the arguments and the degree to which the CUSC Objectives were being bettered. The Amendment Report would show the split of votes and would provide a summary of the arguments for and/or against recommending approval. (new CUSC para required)
3. An Appeal would be possible if there was either a majority decision at variance with that of Ofgem's or even if there was no outright decision by the Panel. It was noted that NGC intended to bring forward a CAP to remove any requirement for the Panel Chairman to have a casting vote in such circumstances. (Removal or amend CUSC paras)
4. As well as changing the amendment process to include presenting the Amendment Report to the CUSC Panel, there would need to be slight changes to the timetable to allow this but any extensions to the timetable would be minimised. (Amend CUSC paras)
5. If a CUSC amendment has been implemented, before an Appeal decision has ruled that it should have been rejected, then there merely needs to be a subsequent housekeeping change to return the CUSC back to its original state. (No change suggested to CUSC)

6. An appeal should not delay the progress of any amendment proposal and so it was felt that there should not be any minimum period between approval and implementation. (No change suggested to the CUSC)
7. The GSG was unable to agree whether or not to include any requirement to have 'Security of Supply' as a separate item within the Amendment Report, mainly because of the uncertainty surrounding whether or not it was ultra-vires. (No change suggested to the CUSC). However NGC reserved the right to give this further consideration and possibly come back with a CAP in its own right. It was nevertheless noted that security of supply issues could still be referred to in consultation responses and that these could then be referred to in the Amendment Report.

It was agreed that NGC would prepare one or more CAPs with legal text to capture the above and for this to be presented at the next CUSC Panel meeting. Furthermore, in anticipation of this, another meeting of the GSG has been scheduled for 4th August for it to stand as a Working Group to consider the CAPs prior to consultation, as well as to have any wider review of Section 8 of the CUSC as considered necessary.

Steve Drummond
GSG Chairman