

## **URGENT AMENDMENT PROPOSAL**

### **Title of Amendment Proposal:**

Extension of Qualified Company Definition

### **Description of the Proposed Amendment:**

It is proposed to amend the CUSC to permit Users to procure that security which is required to be provided under Paragraph 2.22.1 of the CUSC and under the provisions of Bilateral Connection Agreements, BELLAs, BEGAs and Construction Agreements by way of a Performance Bond from a Qualified Company may be provided by a wider category of companies than is currently provided for.

Specifically, it is proposed to widen the definition of 'Qualified Company' or "Qualifying Company" to enable affiliates of a User rather than solely a User's shareholders or immediate holding companies to provide security. The proposed drafting amendments are set out in Appendix 1. The proposed amendment in no way affects the requirement that a Qualified Company or Qualifying Company must have the specified credit rating.

### **Description of Issue or Defect that Proposed Amendment seeks to Address:**

Currently the definition of 'Qualified Company' or 'Qualifying Company' only permits a User to obtain a guarantee from one of its immediate shareholders or from a holding company of one of such shareholders.

This narrow definition is unduly restrictive and may cause problems for Users within more complex group structures where such Users wish to provide a guarantee from a related group company which is not immediately above the User in the corporate ownership structure of that group.

This presents a barrier to Users in providing the most economic and efficient form of security available to that User.

### **Impact on the CUSC:**

The following changes are expected:

- Amendment required to definition of "Qualified Company" and "Qualifying Company" in Section 11 of the CUSC.
- Amendment required to definition of "Qualified Company" and / or "Qualifying Company" in Appendix M to the standard form Construction Agreement appended at Schedule 2 Exhibit 3 to the CUSC.

The wording of the proposed amendment is set out in Appendix I to this CUSC Amendment Proposal.

### **Impact on Core Industry Documentation:**

The proposed amendment would require amendment to be made to Appendix M of Construction Agreements.

### **Impact on Computer Systems and Processes used by CUSC Parties:**

None

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## Details of any Related Modifications to Other Industry Codes:

None

## Justification for Proposed Amendment with Reference to Applicable CUSC Objectives:

The proposed amendment better facilitates the achievement of the Applicable CUSC Objectives as follows:

*a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence*

The Company has a range of statutory duties and licence obligations which include ensuring the efficient, economic and co-ordinated operation of the GB Transmission System, the facilitation of competition and non-discrimination. The proposed amendment better facilitates the efficient discharge by The Company of these obligations and, in particular, it is observed that the proposal would:

- aid an efficient and economic operation of the GB Transmission System by ensuring that Users do not incur extra costs to connection which they would otherwise be able to avoid;
- improve competition among generators, particularly developers of new generating stations by allowing them to meet security requirements under their agreements with The Company more easily;
- ensure that Users which are members of a more complex corporate group structure than other Users are not unfairly discriminated against by reason of this structure (which may have been put in place for other group reasons such as tax or efficiency);
- update the CUSC to reflect the more modern innovative group company arrangements being employed by CUSC Participants; and
- not lead to any increase in risk on the part of The Company.

For these reasons, the proposed amendment would better facilitate Applicable CUSC Objective (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by the 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*

Users which have requested a connection to the GB Transmission System and which have signed up to Construction Agreements with The Company are often required to provide security in respect of substantial potential liabilities under such agreements.

In the absence of being able to provide security by way of guarantee from a 'Qualified Company', a User must provide security by other means such as letter of credit or cash in escrow – these other forms of security can often be significantly more expensive than providing a group company guarantee.

If Users cannot continue to provide security then The Company is entitled to terminate the relevant Construction Agreement and call up the security already provided.

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The ability of and cost to Users to provide security for such connections is a significant barrier to entry for new generation and the proposal would remove an element of this barrier and to a certain extent greatly simplify and improve matters for Users within more complex corporate structures.

For these reasons, the proposed amendment would better facilitate Applicable CUSC 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.

**Details of Proposer:**

**Organisation's Name:** CRE Energy Limited

**Capacity:** CUSC Party

**Detail of Proposer's Representative:**

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## Appendix I

Proposed new definition of "Qualified Company" (with new changes highlighted):

a company which is a public company or a private company within the meaning of section 1(3) of the Companies Act 1985 and which is either a shareholder of the **User** or any holding company of such shareholder or any subsidiary of any such holding company (the expressions 'holding company' and 'subsidiary' having the respective meanings assigned thereto by section 736, Companies Act 1985 as supplemented by section 144(3), Companies Act 1989) and which has throughout the validity period of the **Performance Bond** it gives in favour of **The Company**, a rating of at least A- in Standard and Poor's long term debt rating or A3 in Moody's long term debt rating or such lesser rating which **The Company** may in its absolute discretion allow by prior written notice given pursuant to a resolution of its board of directors for such period and on such terms as such resolution may specify provided that such company is not during such validity period put on any credit watch or any similar credit surveillance procedure which gives **The Company** reasonable cause to doubt that such company may not be able to maintain the aforesaid rating throughout the validity period of the **Performance Bond** and no other event has occurred which gives **The Company** reasonable cause to have such doubt;

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