

DRAFT FOR AMENDMENTS
PANEL VOTE

AMENDMENT REPORT

CUSC Proposed Amendment CAP146

**Responsibilities and liabilities associated with
Third Party Works and Modifications made by
Modification Affected Users**

*The purpose of this report is to assist the
Authority in their decision of whether to
implement Amendment Proposal CAP146*

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1.0 SUMMARY AND RECOMMENDATIONS

Executive Summary

- 1.1 CAP146 - Responsibilities and liabilities associated with Third Party Works and Modifications made by Modification Affected Users was submitted to the Amendments Panel for consideration on 26th January 2007. CAP146 seeks to change the CUSC in respect of two areas where works are required by third parties in order to accommodate infrastructure investment on the Transmission System i.e. Third Party Works and Modifications made by Modification Affected Users (as contained in Sections 6.9 and 6.10 of the CUSC).
- 1.2 Third Party Works (TPW) are sometimes specified in the Construction Agreements of Users seeking to connect to the Transmission System and of those already connected who wish to increase their Transmission Entry Capacity (TEC). These works are required to be carried out on assets owned by parties other than the connecting User and National Grid, before the new connection or increase in TEC can be accommodated. National Grid's working practice is to require the connecting party to take responsibility for organising and paying for these works.
- 1.3 The proposer believes that National Grid should be responsible for all works and costs required to facilitate changes to the Transmission System and the CUSC should be amended accordingly.
- 1.4 CUSC paragraph 6.10.3 requires a User who requests a Modification to compensate affected Users for the cost of other Modifications which are deemed necessary as a consequence. Whilst in these circumstances the responsibility for organising and paying for the works is clearly defined in the CUSC, the proposer believes that the CUSC should be amended to require National Grid to compensate affected Users and that these costs (including the costs described above) should be recovered via Transmission Network Use of System charges (TNUoS) and/or Connection Charges, as appropriate.
- 1.5 In addition, the proposer believes that the proposed amendment should apply to all active Construction Agreements at the time of implementation after the Authority's decision.
- 1.6 The Working Group developed four Working Group Alternative Amendments (WGAA) and each alternative is described below. WGAA – A is the same as the Original proposal but would only apply to Construction Agreements issued and signed after the CAP146 implementation date.
- 1.7 WGAA – B has four elements and proposes to amend CUSC paragraph 6.10.3 that the compensation provisions should include compensation to be paid by National Grid where another User has not been identified. Secondly it limits the costs of compensation to Plant and Apparatus operating at the Connection Point voltage only and defines TPW within the CUSC. Finally, ensure the provisions of CUSC 6.9.3 and 6.10.3 apply to all TPW defined with the Construction Agreements. In addition, it is proposed that WGAA –B should apply to all active Constructions Agreements at the time of implementation after the Authority's decision.
- 1.8 WGAA – C is the same as the WGAA – B but would only apply to Construction Agreements issued and signed after the implementation date.

- 1.9 WGAA – D proposes a process only change to clarify National Grid's current treatment of TPW within the CUSC and the associated agreements to maintain responsibility for TPW with the connecting User.
- 1.10 National Grid received a total of 8 responses to the Consultation for CAP146 including a Consultation Alternative proposed by CE Electric UK. The Consultation Alternative proposes changes to the legal text of WGAA – D by amending the definition of "Third Party Works" in Section 11 and the Standard Form of the Construction Agreements, and creates a new definition of "Consequential Works".

National Grid Recommendation

- 1.11 National Grid as proposer of WGAA - D believes it would better achieve CUSC Applicable Objective and the Consultation Alternative but to a lesser extent than WGAA D. The Original and the Working Group Alternatives A, B and C would not better achieve the objectives.
- 1.12 National Grid believes placing the costs associated with TPW on all Users who would not necessarily receive any benefit would not better facilitate competition nor be more economic and efficient, as National Grid is not the most appropriate party to arrange and undertake TPW. The cost and differing treatment would have a detrimental effect on other Users.

Amendment Panel Recommendation

1.13

2.0 PURPOSE AND INTRODUCTION

- 2.1 This Amendment Report has been prepared and issued by National Grid under the rules and procedures specified in the Connection and Use of System Code (CUSC) as designated by the Secretary of State.
- 2.2 Further to the submission of Amendment Proposal CAP146 (see Annex 3) and the subsequent wider industry consultation that was undertaken by National Grid, this document is addressed and furnished to the Gas and Electricity Markets Authority ("the Authority") in order to assist them in their decision whether to implement Amendment Proposal CAP146.
- 2.3 CAP146 was proposed by E.ON UK and submitted to the CUSC Amendments Panel for consideration at their meeting on 26th January 2007. CAP146 Working Group Report was submitted to the CUSC Panel meeting on 27th April 2007. Following evaluation by the Working Group, the Amendments Panel determined that CAP146 was appropriate to proceed to wider industry consultation by National Grid.
- 2.4 This document outlines the nature of the CUSC changes that are proposed. It incorporates National Grid's recommendations to the Authority concerning the Amendment. Copies of all representations received in response to the consultation have been also been included and a 'summary' of the representations received is also provided. Copies of each of the responses to the consultation are included as Annex 4 to this document.
- 2.5 A glossary for key terms and acronyms of CAP146 can be found in Annex 1 of this document.

- 2.6 This Amendment Report has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid website, at www.nationalgrid.com/uk/Electricity/Codes/.

3.0 PROPOSED AMENDMENT

- 3.1 CAP146 seeks to change the CUSC in respect of two areas where works are required by third parties in order to accommodate infrastructure investment on the Transmission System i.e. TPW and Modifications made by Modification Affected Users (as contained in Sections 6.9 and 6.10 of the CUSC).
- 3.2 TPW are sometimes specified in the Construction Agreements of Users seeking to connect to the Transmission System and of those already connected who wish to increase their TEC. These works are required to be carried out on assets owned by parties other than the connecting party and National Grid, before the new connection or increase in TEC can be accommodated. However, the Construction Agreement does not specify who is responsible for organising and paying for these works. National Grid's working practice is to require the connecting party to take responsibility for organising and paying for these works. The proposer's view is that this is an unreasonable interpretation of the terms of the Construction Agreement and believes that National Grid should be responsible for all works required to facilitate changes to the Transmission System and the CUSC is amended accordingly.
- 3.3 CUSC paragraph 6.10.3 requires a User who requests a Modification to compensate affected Users for the cost of other Modifications which are deemed necessary as a consequence. Whilst in these circumstances the responsibility for organising and paying for the works is clearly defined in the CUSC, the proposer does not believe that this is a reasonable practice and believes that the CUSC should be changed to state that National Grid should compensate such affected Users.
- 3.4 Consequently, CAP146 proposes that the costs associated with TPW and Modifications works should be recovered via TNUoS and/or Connection Charges as appropriate and should apply to all active Construction Agreements at the time of implementation after the Authority's decision.

4.0 ALTERNATIVE AMENDMENT

Working Group Alternative

- 4.1 The Working Group developed four Alternative amendments and each is discussed in below.

WGAA – A

- 4.2 WGAA- A is the same as the CAP146 Original proposal but would only apply to Construction Agreements issued and signed after the implementation date and not to all active Construction Agreements with a Completion date after the implementation date.

WGAA - B

- 4.3 WGAA – B is similar to the Original and WGAA – A but the proposer believes that the cost of all TPW should not necessarily be borne by National Grid as

opposed to the User triggering the works because this would increase costs for the population of TNUoS payers who would, in general, receive little or no benefit in terms of enhanced transmission assets.

- 4.4 CUSC 6.10.3 requires Users to pay compensation resulting from a Modification in accordance with CUSC 6.9 (i.e. a new connection or modification of an existing connection), if no triggering User is identified then the First User (i.e. the one affected) is required to bear its own costs. WGAA –B proposes to extend the compensation provisions within the CUSC to allow the First User to receive compensation from National Grid when a Modification is issued and no triggering User has been identified.
- 4.5 In addition, Paragraph 6.10.3 is not specific in describing the extent of the works carried out by the First User which the Other User would be liable for. For example, the extent of these works may include betterment of plant and apparatus operating at several voltage levels below that of the Connection Point, potentially exposing the Other User to inappropriate liabilities. WGAA –B proposes to clarify CUSC 6.10.3 and limit the costs of the works to “Plant and Apparatus” operating at the Connection Point” at transmission voltage.
- 4.6 It is also proposed to define TPW within the CUSC as the proposer believes the current definition fails to provide guidance to Users regarding the need for such works, their obligation to undertake / procure the works and the liability for their cost.
- 4.7 The CONSAG prohibits the User’s Equipment being energised at the Connection Site if the TPW have not been completed. However, the current arrangements appear to place all responsibility on the Other User to ensure that such works are carried out and effectively bypass the provisions of Paragraphs 6.9.3 and 6.10.3. It is proposed that, where TPW are to be carried out by party to the CUSC, the provisions of Paragraphs 6.9.3 and 6.10.3 should apply. This would ensure that the treatment of CUSC parties, with respect to their obligations to carry out and pay for TPW, would be consistent with the CUSC.
- 4.8 Finally, it is proposed that WGAA –B should apply to all active Construction Agreements at the time of implementation after the Authority’s decision.

WGAA - C

- 4.9 WGAA – C is the same as the WGAA – B but would only apply to Construction Agreements issued and signed after the implementation date and not to all active Construction Agreements with a completion date after the implementation date.

WGAA – D

- 4.10 WGAA-D aims to clarify the process surrounding the existing arrangements and the proposer believes that it is appropriate for the Triggering Party to remain responsible for the costs associated with TPW triggered by their connection or increase in TEC. The principal features are as follows:
- i. The requirement or potential for TPW would be identified by National Grid at the stage of developing the connection Offer
 - ii. The timetable for resolving any TPW would also be identified
 - iii. The Triggering User would be responsible for procurement, delivery of the works, the risk of non-delivery, and the associated costs (i.e. no change)

- iv. The CUSC provides a process (Modification Notification) to manage changes on National Grid's and Users' systems that may have an impact on other Users. Once the Triggering User had signed their Connection Offer, National Grid would use this process to advise all potentially affected Users that a change to the Transmission System has potential to affect them
- v. Once any affected Users had identified any TPW National Grid would notify the Triggering User setting out the details of the TPW and associated timing
- vi. The CUSC provides a route for an affected User to be compensated by a Triggering User where the works are triggered by the construction of a new connection site. This will not preclude a User from entering into a commercial deal outside of the CUSC.

Consultation Alternative

- 4.11 The Consultation Alternative proposes changes to the legal text of WGAA – D by amending the definition of “Third Party Works” in Section 11 and the Standard Form of the Construction Agreements and creates a new definition of “Consequential Works”.
- 4.12 Within the Working Group a differentiation was made between enabling works (those works required to be undertaken to enable the construction of transmission assets required to provide the connection to the connecting User) and consequential works (those works required as a consequence of the new User connection and which need to be undertaken before a User can become operational e.g. replacement of an existing Users equipment to cater for increased fault level). In the view of the proposer making this distinction helped to identify that certain works (e.g. securing wayleave for a new transmission circuit, the diversion of an overhead BT line or underground gas pipeline etc), which may be required to construct new transmission assets and such works should be National Grid's responsibility.
- 4.13 In addition, the cost of these works should also be included as part of the costs of construction of the transmission assets i.e. either connection or infrastructure assets as appropriate, and recovered in the normal manner.
- 4.14 It is the proposer belief that such items of work are inextricably linked to the construction of the transmission assets and that they should not be included within the scope of Third Party Works.

5.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

Proposed Amendment

5.1 CAP146 assessment against the CUSC Objective(s); based on the views of the Working Group and the proposer of the Consultation Alternative are summarised below:

- (a) *the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence; and*
- (b) *facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.*

Original Amendment

Efficient discharge of licence obligations / Efficient & Economic

Promotes	Demotes
<ul style="list-style-type: none"> • National Grid is able to see the whole cost of its specific design choices, so is better able to make a decision as to the most economically efficient solution over all. • All costs being allocated to National Grid fits with shallow charging approach and so avoids the likelihood of inefficient investment • National Grid is the most appropriate party to arrange for TPW to be undertaken. • Removes cause of disputes in relevant Construction Agreements by clarifying responsibilities in respect of TPW. 	<ul style="list-style-type: none"> • Requirement to open up all existing construction agreements may be administratively cumbersome and also impractical if works are already underway • National Grid would face additional contractual responsibilities and would be exposed to additional risks and costs which are not included in its Price Control.

Facilitates Competition

Facilitates	Frustrates
<ul style="list-style-type: none"> • The removal of randomly generated deep connection costs on Users, within what is otherwise a shallow connection regime, removes an unnecessary risk for new entrants and thus removes a barrier to entry. • Removes a current cause of discrimination where new entrants who have no TPW as part of their related construction works have the cost of these works socialised under the shallow charging policy, whereas those whose works include TPW 	<ul style="list-style-type: none"> • If costs were funded via TNUoS, all Users have to pick up the costs associated with TPW, including demand consumers – it is difficult to justify that TPW are assets that benefit the system for all Users.

<p>have to pay for them up front and in full.</p> <ul style="list-style-type: none"> Removes a requirement for new entrants to negotiate directly with incumbent competitors to facilitate their entry onto the system. 	
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Working Group Alternative Amendment

WGAA –A

5.2 WGAA – A promotes and demotes Applicable Objective (a) and (b) in the same way as the Original Proposal, described above. In addition it would result in the different treatment Users' TPW depending on when CONSAGs were signed could be inefficient.

WGAA –B

Efficient discharge of licence obligations / Efficient & Economic

Promotes	Demotes
<ul style="list-style-type: none"> Removes cause of disputes in relevant Construction Agreements by clarifying responsibilities in respect of TPW. Tries to identify which TPW are for sole use of Triggering User and therefore avoids all Users (including demand consumers) having to pick up these costs where this little or no benefit for these Users. Proposes that compensation provisions in favour of the First User should include compensation to be paid by National Grid where an Other User (Triggering Party) has not been identified. 	<ul style="list-style-type: none"> Formalises National Grid's working assumption that it is the new entrant's responsibility to arrange and pay for TPW to be undertaken. Present legal requirements are debatable, but this would formalise arrangements which require the User to arrange such works even though it is not the best party to do so. Requirement to open up all existing construction agreements may be administratively cumbersome.

Facilitates Competition

Facilitates	Frustrates
	<ul style="list-style-type: none"> Formalises National Grid's working assumption that it is the new entrant's responsibility to arrange and pay for TPW to be undertaken. Present legal requirements are debatable, but this would formalise arrangements which would constitute a barrier to entry.

WGAA –C

- 5.3 WGAA – C promotes and demotes Applicable Objective (a) and (b) in the same way as the WGAA – B, described above.

WGAA –D**Efficient discharge of licence obligations / Efficient & Economic**

Promotes	Demotes
<ul style="list-style-type: none"> • Clarifies the process for Users regarding the management of TPW such that National Grid can manage the process effectively on behalf of Triggering Party. • Costs associated with TPW are not placed upon all Users who would not necessary obtain a benefit from the TPW assets. 	<ul style="list-style-type: none"> • Formalises National Grid's working assumption that it is the new entrant's responsibility to arrange and pay for TPW to be undertaken. Present legal requirements are debatable, but this would formalise arrangements which require the User to arrange such works even though it is not the best party to do so. • Does not remove the perverse incentive for a User to terminate a project if it has TPW when the actual transmission costs are (by comparison) low. All TPW costs allocated to Triggering User does not fit with shallow charging approach and may lead to inefficient investment.

Facilitates Competition

Facilitates	Frustrates
<ul style="list-style-type: none"> • Removes the requirement for a Triggering User to approach an incumbent User and codifies National Grid's process for TPW • Stricter completion dates and clarification will improve the position of the Triggering Party. 	<ul style="list-style-type: none"> • Formalises National Grid's working assumption that it is the new entrant's responsibility to arrange and pay for TPW to be undertaken. Present legal requirements are debatable, but this would formalise arrangements which would constitute a barrier to entry.

Consultation Alternative Amendment

- 5.4 In the view of the proposer, the Consultation Alternative clarifies the process for Users regarding the management of TPW such that National Grid can manage the process effectively on behalf of Triggering Party and ensures costs associated with TPW are not placed upon all Users who would not necessary obtain a benefit from the TPW assets.

6.0 PROPOSED IMPLEMENTATION

- 6.1 The Working Group and National Grid propose CAP146 Original and WGAA – B should be implemented 3 months after an Authority decision because National Grid would require time to assess all affected Construction agreements, as it would apply to all active Construction agreements with a completion date occurring after implementation.
- 6.2 The Working Group and National Grid propose CAP146 WGAA - A, WGAA C, WGAA –D and the Consultation Alternative should be implemented 1 month after an Authority decision.

7.0 IMPACT ON THE CUSC

- 7.1 CAP146 and WGAA-A would require amendments to Sections 1.3.4 and 6.10.3 of the CUSC and the Standard form of the Construction Agreement contained in (Schedule 2 Exhibit 3). The text required to give effect to the Original Proposal is contained as Part A of Annex 2 of this document.
- 7.2 WGAA-B and WGAA-C would require amendments to Section 6.10.3 of the CUSC, the Standard form of the Construction Agreement contained in (Schedule 2 Exhibit 3) and also Section 11 to add a new CUSC definition for TPW and Connection Point. The text to give effect to WGAA-B and WGAA-C is attached as Part B of Annex 2 of this document.
- 7.3 WGAA-D would require amendments to the Standard form of the Construction Agreement contained in (Schedule 2 Exhibit 3) and also Section 11 to add a new CUSC definition for TPW. The text to give effect to WGAA-D is attached as Part C of Annex 2 of this document.
- 7.4 Consultation Alternative would require amendments to the Standard form of the Construction Agreement contained in (Schedule 2 Exhibit 3) and also Section 11 to add a new CUSC definition for TPW. The text to give effect to the Alternative is attached as Part D of Annex 2 of this document.

8.0 IMPACT ON CUSC PARTIES

- 8.1 CAP146, WGAA-A, WGAA-B and WGAA-C would move the liability for TPW from affected Users to National Grid which could increase TNUoS charges across all Users, if costs for TPW were recovered as envisaged by the proposer's.

9.0 IMPACT ON INDUSTRY DOCUMENTS

Impact on Core Industry Documents

- 9.1 CAP146 is likely to have an impact upon the SO-TO Code. The STC Committee have been informed of the potential consequential impact on the STC in the event of CAP146 Amendment Proposal being approved by the Authority and subsequently implemented within the CUSC. The STC Committee are currently reviewing the impact of CAP146 on the STC to identify the consequential changes required to back off CAP146 provisions within the STC. Any associated STC changes will be proposed and progressed in line with the STC Amendment Proposal process in accordance with Section B, paragraph 7.2.

Impact on other Industry Documents

- 9.2 CAP146, WGAA-A, WGAA-B and WGAA-C would have a consequential impact on National Grid's Charging Methodologies due to the obligations that would be placed on National Grid to arrange payment for TPW and some system modifications. This may also have an impact on National Grid's Transmission Price Control depending upon the outcome for cost recovery.

10.0 IMPACT ON INDUSTRY COMPUTER SYSTEMS OR PROCESSES

- 10.1 CAP146 has no impact upon on Industry Computer Systems or Processes.

11.0 VIEWS AND REPRESENTATIONS

- 11.1 This Section contains a summary of the views and representations made by consultees during the consultation period in respect of the Proposed Amendment and the Alternative Amendment.

Views of Panel Members

- 11.2 No views or representations were made by Panel Members in their capacity as Panel Members

View of Core Industry Document Owners

- 11.3 No views or representations were made by Core Industry Document Owners.

Working Group

- 11.4 The Working Group recommended to the CUSC Panel that CAP146 had been fully considered and recommended to the CUSC Panel that the Original proposal and the alternatives should proceed to wider Industry Consultation as soon as possible. The Working Group believed its Terms of Reference have been met. The group were divided as to which Alternative best facilitated the CUSC Applicable Objectives, with a majority of 1 supporting the Original. A summary is provided in the table below.

Proposed Amendment	Better than status quo	Not Better than status quo	Best proposed amendment
1. CAP146	4	1	3
2. WGAA-A	5	0	1
3. WGAA-B	1	2	0
4. WGAA-C	2	3	1
5. WGAA-D	4	2	2

Responses to Consultation

11.5 The following table provides an overview of the representations received. Copies of the representations are attached as Annex 4.

Reference	Company	Supportive	Comments
CAP146-CR-01	British Energy Group plc	WGAA - D	British Energy strongly disagree with CAP146 and WGAA – B due to the retrospective allocation of liabilities, believing retrospective changes may heighten future risk and cause investors to lose confidence in the process. British Energy believe WGAA – D facilitates CUSC objective a) and b) and any additional costs associated with a project should be the responsibility of the party that requires the works.
CAP146-CR-02	Carron Energy Ltd	Original	Carron fully supports the Original amendment believing it would reduce barriers and aid competition. Carron does not support the other alternatives believing: WGAA – A would be discriminatory to existing Users who have an agreement prior to the implementation: WGAA –B and WGAA – C the cost of connection are too high and the TO should take responsibility and the benefits would out way the increase in TNUoS: WGAA – D does not address the defect
CAP146-CR-03	CE Electric behalf of Northern Electric Distribution Limited and Yorkshire Electricity Distribution plc	Raised Consultation Alternative	CE Electric raised the CAA to WGAA- D see Section 4 for further details of the proposal
CAP146-CR-04	Edf Energy	WGAA - D	Edf supports WGAA – D believing it is better than the current baseline and does not support WGAA – B and C. Edf sympathises with the intentions of the original proposal and WGAA - A, however Edf consider the current arrangements place the correct liability on connecting parties with regard to their impact on other users.

CAP146-CR-05	E.ON UK	BEST = WGAA – A and Original	E.ON supports the original and WGAA – A, believing that both better facilitates the applicable objectives. E.ON recognise that the original could be problematic and hence raised WGAA – A which they consider to be the best alternative. E.ON believes that WGAA B and C only address one element of the defect associated with TPW and therefore believes that both alternatives fail to better the CUSC Objectives. E.ON do not support WGAA – D as it does not seek to address the element of the defect regarding inappropriate requirements on connecting Users to organise MAUMs or National Grid's inappropriate interpretation of TPW in the Construction Agreements.
CAP146-CR-06	RWE Trading	WGAA -B	RWE supports WGAA – B, C and D in descending order and does not support the original or WGAA – A. RWE believes WGAA B best facilitates the CUSC Objectives believing compensation should also apply to National Grid which in turn will incentivise National Grid to minimise overall costs and would provide greater clarity for Users.
CAP146-CR-07	Scottish and Southern Energy on behalf of Southern Electric, Keadby Generation Ltd, Medway Power Ltd and SSE Energy Supply Ltd	WGAA - D	SSE supports WGAA – D believing this would better facilitate the CUSC Applicable Objectives and will provide greater clarity in terms of the process. SSE do not support the original or WGAA – B due the retrospective aspects.
CAP146-CR-08	Scottish Power Energy Network on behalf of SP Distribution Ltd and SP Manweb Plc	WGAA – D	SPEN supports WGAA – D as it clarifies responsibilities within the CUSC. SPEN does not support the original or WGAA – A, B or C believing the triggering User should be expose to the costs of TPW. However, National Grid should be responsible for managing certain aspects of TPW

Responses to Consultation Alternative

11.6 The following table provides an overview of the representations received. Copies of the representations are attached as Annex 4.

Reference	Company	Supportive	Comments
CAP146-CAAR-01	CE Electric behalf of Northern Electric Distribution Limited and Yorkshire Electricity Distribution plc	Consultation Alternative	CE Electric believes the Consultation Alternative will better facilitate the CUSC Applicable Objectives
CAP146-CAAR-02	E.ON UK	BEST = WGAA – A and Original	E.ON supports Consultation Alternative but believes this alternative fails to address the defect and continues to support WGAA – A and the original
CAP146-CAAR-03	Scottish Power Energy Network on behalf of SP Distribution Ltd and SP Manweb Plc	WGAA –D	Scottish Power continues to supports WGAA – D and does not support the Consultation Alternative

12.0 AMENDMENT PANEL RECOMMENDATION

12.1

13.0 NATIONAL GRID RECOMMENDATION

- 13.1 National Grid has a number of concerns regarding CAP146 Original, WGAA –A, B and C which are described in detail below. National Grid believes it is appropriate for a triggering User to be exposed to the costs associated with TPW arising as a result of its connection or Modification and this is consistent with National Grid’s licence obligations. Consequently, WGAA – D proposes a “process only” change to clarify and code National Grid’s treatment of TPW within the CUSC and associated agreements for Users. National Grid supports the Consultation Alternative to a lesser extend than WGAA – D.
- 13.2 The Original, WGAA – A, B and C would change a fundamental principle of the CUSC. The original CUSC structure was introduced on the basis that the interconnected nature of the various “systems” means that each CUSC User could change its “system” that could cause an affect on another CUSC Users system. Between National Grid and a User the modification notice process requires each User to notify the other when they believe there may be a physical\operational impact at a connection site. Then the affected User would determine what is required and bare its own costs. The only exception to this, in terms of costs, is 6.10.3 where works are attributable to a triggering User at a connection site. In those circumstances it was considered appropriate that the costs incurred by the existing user for National Grid to maintain compliance with the SQSS to be borne by the new User.
- 13.3 As a result CAP146 and WGAA - A, B and C fail to differentiate in the way CUSC 6.10 currently does, and this therefore places an obligation on National Grid to procure all works whether driven by a National Grid modification or a National Grid modification triggered by a User modification. Consequently, Users would be held harmless as a result of any change to the transmission system, i.e. once a User is connected any changes to their equipment or system linked to a change on the transmission system would be procured by National Grid until the User was de-commissioned. However, WGAA B and C would limit the works to Plant and Apparatus at the transmission voltage at the Connection Point.
- 13.4 National Grid does not currently undertake TPW mainly because these activities are not related to the construction and maintenance of transmission infrastructure which is National Grid’s principal, regulated business. In the event that National Grid was required to undertake TPW then these activities would need to be funded since they are not included in the current Price Control.
- 13.5 The underlying assumption in the CAP146 Original proposals is that TPW should be funded by all Users through TNUoS charges, which would become an additional part of the residual element of the charge in the absence of making changes to the incremental cost of capacity. National Grid does not agree that this would be an appropriate mechanism because Transmission works are fundamentally different to TPW. It is clear that the cost of transmission works have been assessed as part of a price control process and it is within National Grid’s expertise and competence to deliver works in line with these regulated costs. This may not be the case for TPW, the provision of which could be undertaken by any competent party.

- 13.6 Moreover, if the costs of TPW were to be recovered from all Users, National Grid would be required to demonstrate that its investments in relation to TPW are efficient. The manner in which National Grid can demonstrate that TPW undertaken are efficient is through a User being willing to pay for such works. If the User can find a better commercial alternative then there should be no impediment to the User delivering its own TPW. It is the contestable nature of TPW that demonstrates efficiency and leads to overall lower costs for consumers. It is this demonstration of efficiency that leads National Grid to believe that if CAP146 or WGAA –A, B or C was approved, it should be treated as an excluded service and as a consequence a User specific charge would undermine the main purpose of the Original and WGAA A, B and C's.
- 13.7 National Grid is not necessarily in a better position than User's to arrange and pay for TPW as National Grid is required to negotiate within its licence framework, (economically and efficiently) which may not be conducive to resolving the matters in a timescale that is acceptable to the triggering User. National Grid believes the triggering User has the necessary incentives outside a licence framework to reach a commercial arrangement with the affected User. In addition, comfort can be given that any incumbent who is affected by a triggering User would be restricted within the confines of competition law.
- 13.8 National Grid aims to design connections to the transmission System at the lowest cost possible for the end consumer and this is undertaken in the three month connection application / offer process based on an engineering estimate. Consequently, any assessment of TPW is estimated and does not take account of detailed costs. Only once the triggering User signs their Connection Offer would it normally be possible to begin discussions with other system Users that could potentially be affected. Making National Grid responsible for these works will not change this, unless National Grid was given additional rights similar to the System Operator Transmission Owner Code (STC). For example, these could include the requirement on CUSC Party's to respond (within a defined timescale) to an application with an offer to undertake the necessary TPW.
- 13.9 National Grid is also concerned about the retrospective effect of the Original amendment and WGAA – B and the potential complications which are likely to arise if the proposals are applied to all live Construction Agreements. For example, National Grid can only recover costs which are economically and efficiently incurred and if a commercial deal was agreed for TPW would National Grid be able to take responsibility for such an agreement?
- 13.10 National Grid believes placing the costs associated with TPW on all Users who would not necessarily receive any benefit would not better facilitate competition nor be more economic and efficient, as National Grid is not the most appropriate party to arrange and undertake TPW. The cost and differing treatment would have a detrimental effect on other Users.
- 13.11 The Consultation Alternative is based on National Grid's WGAA – D and National Grid believes that this proposed amendment would better the CUSC Objectives but to a lesser extent than WGAA –D.
- 13.12 Finally, National Grid believes for the reasons stated above WGAA - D would best achieve CUSC Applicable Objectives and to a lesser extent Consultation Alternative. However, the Original and the other Alternatives would not better achieve the CUSC Applicable Objectives.

14.0 COMMENTS ON DRAFT AMENDMENT REPORT

14.1 National Grid received 1 response following the publication of the draft Amendment Report. The following table provides an overview of each representation. Copies of the representations are attached as Annex 5.

Reference	Company	Summary of Comments
CAP146-AR-01	CE Electric	Supports the Consultation Alternative Amendment

ANNEX 1 – GLOSSARY AND ACRONYMS

Enabling Works	Those works required to be undertaken to enable the construction of transmission assets required to provide access to the connecting User.
Consequential Works	Those works which are required as a consequence of the new User connecting and which need to be undertaken before a User can become operational.
First User/Modification Affected User	A User which is required to carry out works due to a modification/connection application by an Other User (Triggering Party)
Modification Affected User Modification (MAUM)	Paragraph 6.10.3 of the CUSC requires a User who requests a Modification to compensate relevant Users for the cost of other Modifications which are deemed necessary as a consequence.
Other User/Triggering Party	The User which has applied for a Modification/Connection
Third Party Works (TPW)	The works required on a Third Party's plant or apparatus in order for a Modification/Connection to take place.
Users' Works	Those works necessary for installation of the User's Equipment

ANNEX 2 – PROPOSED LEGAL TEXT TO MODIFY THE CUSC

Part A - Text to give effect to the Original Proposed Amendment and Working Group Alternative Amendment A

The proposed Legal text to modify the CUSC is detailed below by inserting the coloured underlined text and deleting the coloured struck through text.

Standard form of the Construction Agreement contained in (Schedule 2 Exhibit 3

“Construction Works”	the Transmission Connection Asset Works, Transmission Reinforcement Works, Seven Year Statement Works and One Off Works and such additional works as are required in order to comply with any relevant Consents relating to any such works, <u>including but excluding</u> for the avoidance of doubt any Third Party Works
“User’s Works”	those works necessary for installation of the User’s Equipment which are specified in Appendix I to this Construction Agreement , <u>but excluding for the avoidance of doubt any Third Party Works</u>

Section 6 – General Provisions

6.10.3 **The Company** shall have no obligation to compensate any **User** (~~the “First User”~~) for the reasonable and proper cost or expense of any **Modification** required to be made by any that User as a result of any **The Company Modification** under Paragraph 6.9.3.1. ~~Where such The Company Modification is made as a result of the construction of a New Connection Site or a Modification for another User (the “Other User”), the Other User shall compensate the First User for the reasonable and proper cost and expense of any Modifications required to be made by the First User as a result of that The Company Modification.~~ Such compensation shall be paid to the **First User** by the The Company Other User within thirty days of production to The Company the Other User of a receipted invoice (together with a detailed breakdown of such reasonable costs and expenses) for the expenditure which has been incurred by the **First User**.

Section 1 – Applicability of sections and related agreements structure

1.3.4 General Provisions

- a) **Bilateral Agreements** and **Construction Agreements** which are entered into between **The Company** and **Users** shall be in or substantially in the relevant exhibited form of **Bilateral Agreement** and/or **Construction Agreement** unless the parties thereto agree otherwise.
- b) Each and every **Bilateral Agreement, Mandatory Services Agreement** and **Construction Agreement** entered into by a **User** and in force from time to time shall constitute a separate agreement governed by the terms of the **CUSC** and will be read and construed accordingly. For the avoidance of doubt no **User** shall enjoy any rights nor incur any obligations against any **User party other than The Company** pursuant to the terms of any **Bilateral Agreement, Mandatory Services Agreement** or **Construction Agreement**.

Part B - Text to give effect to the Working Group Alternative Amendment B and C

The proposed Legal text to modify the CUSC is detailed below by inserting the coloured underlined text and deleting the coloured struck through text.

Section 6 – General Provisions

CUSC 6.10.3 ~~The Company shall have no obligation to compensate any User (the "First User") for the cost or expense of any Modification required to be made by any User as a result of any The Company Modification under Paragraph 6.9.3.1. Where such The Company a Modification is made by a User (the "First User") as a result of a The Company Modification under Paragraph 6.9.3.1~~ made as a result of the construction of a **New Connection Site** or a **Modification** for another **User** (the "**Other User**") or for The Company, the **Other User** or The Company as applicable shall compensate the **First User** for the reasonable and proper cost and expense of any such Modifications required to be made by the **First User** to Plant and/or Apparatus directly connected to the Connection Point as a result of that **The Company Modification**. Such compensation shall be paid to the **First User** by the **Other User** or The Company within thirty days of production to the **Other User** of a receipted invoice (together with a detailed breakdown of such reasonable costs and expenses) for the expenditure which has been incurred by the **First User**.

Section 11 – Interpretations and definitions

New CUSC Definition

"Connection Point"	as defined in the Grid Code
"Third Party Works"	The works to Plant and/or Apparatus which is not owned or operated by either The Company or the User (the " Other User ") and is specified in Appendix N of the Other User's Construction Agreement .

Standard form of the Construction Agreement contained in (Schedule 2 Exhibit 3

Add the following as clause 2.x

2.x Third Party Works

2.x.1 The Other User is responsible for ensuring that all such works to Plant and/or Apparatus which is not owned or operated by another User (the "First User") are completed prior to the Completion Date. In the case of Third Party Works to be carried out by the First User, The Company shall submit to the First User a Modification Notification under Paragraph 6.9.3 and any compensation payable to the First User by the Other User or The Company as appropriate shall be in accordance with Paragraph 6.10.3.

Part C - Text to give effect to the Working Group Alternative Amendment D

NOTES

The introduction of a definition of “third party works” in the CUSC identifies in general term the nature of these works against which principal those third party works relevant to a specific project would be set out in Appendix N to that Construction Agreement.

Have introduced new clauses into Clause 2 specifically relating to “third party works” as follows rather than categorising them as part of the User’s works. These clauses:

- a) specifically provide that the User is responsible for getting these works done and provide for the User to confirm that they have been completed. In cases where the works are such that they need to be completed before National Grid can undertake its own works this should be self evident but where works are consequential National Grid needs the right to have confirmation from the third parties that they are completed in order to be able to issue the operational notification under Clause 7 of the Construction Agreement.
- b) the construction programme will set out the date by which National Grid need the third party works to be completed. Depending on the nature of the works this could be at a time to enable National Grid itself to do something or, where it’s a prerequisite to the issue of the operational notification, be the Completion Date.
- c) recognises that its possible that the exact nature of the TPW will not be known at the time of an offer particularly where the works have to be identified by another User following the modification notice process under CUSC Paragraph 6.9, and provides for National Grid to confirm these by a specified date and places an obligation on National Grid to follow the modification notification process.
- d) provide for revision of construction programme, construction works or termination in the event of delay or failure to deliver (in similar way as with delay\failure of Users works)

The proposed Legal text to modify the CUSC is detailed below by inserting the coloured underlined text

Section 11 – Interpretations and definitions

“Third Party Works”

in relation to a particular User those works, defined as such in its Construction Agreement; being works undertaken on assets belonging to someone other than The Company or the User where such works are required by The Company to enable it to provide the connection to and/or use of the GB Transmission System by the User or required as a consequence of connection to and/or use of the GB Transmission System by the User;

Standard form of the Construction Agreement contained in (Schedule 2 Exhibit

3

Amend the definition of Third Party Works in Clause 1 as follows:

“Third Party Works”

the works to be undertaken on assets belonging to a party other than The Company and the User to enable it to provide or as a consequence of the connection to and/or use of the GB Transmission System by the User as specified in Appendix N;

Add the following as clause 2.x

2.x Third Party Works

2.x.1 The User shall be responsible for carrying out or procuring that the Third Party Works are carried out and shall carry them out or procure that they are carried out in accordance with the timescales specified in the Construction Programme. The User shall confirm to The Company or, where requested to do so by The Company, provide confirmation from the third party that the Third Party Works have been completed.

2.x.2 Given the nature of these works it may not be possible to fully identify the works required or the third parties they relate to at the date hereof. Where this is the case The Company shall, subject to 2.x.3 below, advise the User as soon as practicable and in any event by [] of the Third Party Works and shall be entitled to revise Appendix N and as a consequence the Construction Programme as necessary to reflect this.

2.x.3 Where Third Party Works are likely to be Modifications required to be made by another user(s) (“the “First User(s)”) as a consequence of Modifications to the GB Transmission System to be undertaken by The Company under this Construction Agreement The Company shall as soon as practicable after the date hereof issue the notification to such First User’s in accordance with CUSC Paragraph 6.9.3.1. The User should note its

obligations under **CUSC** Paragraph 6.10.3 in respect of the costs of any **Modifications** required by the **First User(s)**.

2.x.4 In the event that the **Third Party Works** have not been completed by the date specified in the **Construction Programme** or, in **The Company's** reasonable opinion are unlikely to be completed by such date, **The Company** shall be entitled to revise the **Construction Programme** as necessary to reflect such delay and also, where **The Company** considers it necessary to do so, shall be entitled to revise the **Construction Works** (and as a consequence Appendices A and B to the **Bilateral Connection Agreement**). For the avoidance of doubt such revisions shall be at **The Company's** absolute discretion and the consent of the **User** is not required. Further, in the event that the **Third Party Works** have not been completed by [] **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and in this event the provisions of Clause 11 of this **Construction Agreement** shall apply.

Part D - Text to give effect to the Consultation Alternative Amendment

The proposed Legal text to modify the CUSC is detailed below by inserting the coloured underlined text

Section 11 – Interpretations and definitions

“Third Party Works”

In relation to a particular User those Consequential Works, defined as such in its Construction Agreement; being works undertaken on assets belonging to someone other than The Company or the User where such works are required as a consequence of connection to and/or use of the GB Transmission System by the User, and for the avoidance of doubt, excluding those works required by The Company to enable the construction of transmission assets required by The Company to provide the connection to the connecting User

“Consequential Works”

Those works which are required as a consequence of the new User connecting and which need to be undertaken before a User can become operational.

Standard form of the Construction Agreement contained in (Schedule 2 Exhibit 3

Amend the definition of Third Party Works in Clause 1 as follows:

“Third Party Works”

Consequential Works to be undertaken on assets belonging to a party other than The Company or the User as a consequence of the connection to and/or use of the GB Transmission System by the User, and for the avoidance of doubt, excluding those works required by The Company to enable the construction of transmission assets required by The Company to provide the connection to the connecting User;

Add the following as clause 2.x

2.x Third Party Works

2.x.1 The User shall be responsible for carrying out or procuring that the Third Party Works are carried out and shall carry them out or procure that they are carried out in accordance with the timescales specified in the Construction Programme. The User shall confirm to The Company or, where requested to do so by The Company, provide confirmation from the third party that the Third Party Works have been completed.

2.x.2 Given the nature of these works it may not be possible to fully identify the works required or the third parties they relate to at the date hereof. Where this is the case The Company shall, subject to 2.x.3 below, advise the User as soon as practicable and in any event by [] of the Third Party Works and shall be entitled to revise Appendix N and as a consequence the Construction Programme as necessary to reflect this.

- 2.x.3 Where **Third Party Works** are likely to be **Modifications** required to be made by another user(s) ("the "**First User(s)**") as a consequence of **Modifications** to the **GB Transmission System** to be undertaken by **The Company** under this **Construction Agreement** **The Company** shall as soon as practicable after the date hereof issue the notification to such **First User's** in accordance with **CUSC** Paragraph 6.9.3.1. The **User** should note its obligations under **CUSC** Paragraph 6.10.3 in respect of the costs of any **Modifications** required by the **First User(s)**.
- 2.x.4 In the event that the **Third Party Works** have not been completed by the date specified in the **Construction Programme** or, in **The Company's** reasonable opinion are unlikely to be completed by such date, **The Company** shall be entitled to revise the **Construction Programme** as necessary to reflect such delay and also, where **The Company** considers it necessary to do so, shall be entitled to revise the **Construction Works** (and as a consequence Appendices A and B to the **Bilateral Connection Agreement**). For the avoidance of doubt such revisions shall be at **The Company's** absolute discretion and the consent of the **User** is not required. Further, in the event that the **Third Party Works** have not been completed by [] **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and in this event the provisions of Clause 11 of this **Construction Agreement** shall apply.

ANNEX 3 – AMENDMENT PROPOSAL FORM

CUSC Amendment Proposal Form	CAP:146
<p>Title of Amendment Proposal: Responsibilities and liabilities associated with Third Party Works and Modifications made by Modification Affected Users</p>	
<p>Description of the Proposed Amendment (mandatory by proposer):</p> <p>The CUSC to be amended to:</p> <ol style="list-style-type: none"> 1. Clarify that National Grid is responsible for arranging and paying for all Third Party Works listed in Appendix N of all relevant Construction Agreements. 2. Change the provisions in Section 6 of the CUSC relating to Modifications made by Modification Affected Users so that National Grid is responsible for paying the costs of all such Modifications. 	
<p>Description of Issue or Defect that Proposed Amendment seeks to Address (mandatory by proposer):</p> <p>The amendment seeks to change the CUSC in respect of two areas where works are required by third parties in order to accommodate infrastructure investment on the transmission system. Although slightly different areas of the CUSC, both relate to the same basic issue.</p> <ol style="list-style-type: none"> 1. Third Party Works <p>Third Party Works are sometimes specified in the Construction Agreements of Users seeking to connect to the transmission system and of those already connected who wish to increase their Transmission Entry Capacity (TEC). These works are required to be carried out on assets owned by parties other than the connecting party and National Grid, before the new connection or increase in TEC can be accommodated. However, the Construction Agreement does not specify who is responsible for organising and paying for these works. National Grid's working practice is to require the connecting party to do so. E.ON does not believe that this is a reasonable practice and believes that National Grid should be responsible for all works required to facilitate changes to the transmission system.</p> <ol style="list-style-type: none"> 2. Modifications made by Modification Affected Users <p>Section 6.9 and 6.10 of the CUSC contain provisions relating to Modifications (as defined in the CUSC). Paragraph 6.10.3 requires a User who requests a Modification to compensate relevant Users for the cost of other Modifications which are deemed necessary as a consequence. Again, E.ON does not believe that this is a reasonable practice and that National Grid should compensate such Users, consistent with our position relating to Third Party Works above.</p> <p>We believe that the User should not be responsible for arranging and paying for either category of works described above as:</p> <ol style="list-style-type: none"> a) It is not consistent with a shallow connection regime. b) It is not consistent with clustering. c) It is inconsistent with the one-stop-shop principle of the GBSO being responsible for providing connection offers. d) It is not appropriate to potentially expect a new entrant to contract directly with an incumbent competitor in order to gain entry into the market. e) It is not clear that the applicant is the most appropriate party to carry out this work. f) National Grid is responsible for the connection design. Therefore, it should be responsible for seeing it through. The User, by contrast does not specify the transmission reinforcement associated with its connection and should therefore not be responsible for its implementation. 	
<p>Impact on the CUSC (this should be given where possible): We would expect at least the following changes:</p> <ol style="list-style-type: none"> 1. A change to the definition of User's works to clarify that they do not include Third Party Works. 2. A change to the definition of Construction Works to include Third Party Works. 3. A change to 6.10.3 to clarify that National Grid should be responsible for paying for Modifications triggered by other Modifications. 4. It may be necessary to include a clause in the main text of the CUSC to clarify that National Grid is responsible for arranging and paying for any Third Party Works to be carried out and that these responsibilities cannot be imposed on Users through their bilateral agreements. 	

<p>Impact on Core Industry Documentation (this should be given where possible): None expected.</p>
<p>Impact on Computer Systems and Processes used by CUSC Parties (this should be given where possible):</p> <p>Existing Construction Agreements containing such clauses would be reissued with the new amendments.</p>
<p>Details of any Related Modifications to Other Industry Codes (where known):</p> <p>None expected.</p>
<p>Justification for Proposed Amendment with Reference to Applicable CUSC Objectives** (mandatory by proposer):</p> <p>The present access regime operates under a mainly shallow connection policy. However, some applicants are randomly subjected to deep responsibilities and liabilities under the present arrangements, which we do not believe are consistent with a shallow, clustered approach and which are unnecessary and inappropriate. These act as a barrier to competition in generation. Therefore their removal will benefit objective b), facilitating effective competition in the generation and supply of electricity.</p> <p>Furthermore, clarifying the responsibilities associated with Third Party Works will remove an unnecessary complication in the current connection and use of system arrangements, which will benefit applicable objective a), the efficient discharge by National Grid of the obligations imposed on it by the Act and the Transmission Licence.</p>

<p>Details of Proposer: Organisation's Name:</p>	<p>Paul Jones E.ON UK plc</p>
<p>Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or "energywatch")</p>	<p>CUSC Party</p>
<p>Details of Proposer's Representative: Name: Organisation: Telephone Number: Email Address:</p>	<p>Paul Jones E.ON UK plc 02476 183 838 paul.jones@eon-uk.com</p>
<p>Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:</p>	<p>Ben Sheehy E.ON UK plc 02476 183 381 ben.sheehy@eon-uk.com</p>
<p>Attachments:</p> <p>Title and No. of pages of each Attachment:</p>	

ANNEX 4 – REPRESENTATIONS RECEIVED DURING CONSULTATION

This Annex includes copies of any representations received following circulation of the Consultation Document (circulated on 25th May 2007 requesting comments by close of business on 29th June 2007).

Representations were received from the following parties:

No.	Company	File Number
1	British Energy Group plc	CAP146-CR-01
2	Carron Energy Ltd	CAP146-CR-02
3	CE Electric UK	CAP146-CR-03
4	Edf Energy	CAP146-CR-04
5	E.ON UK	CAP146-CR-05
6	RWE Trading	CAP146-CR-06
7	Scottish and Southern Energy	CAP146-CR-07
8	Scottish Power Energy Networks	CAP146-CR-08



Beverley Viney
Amendments Panel Secretary
Electricity Codes
National Grid
National Grid House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

28th June 2007

Dear Beverley

British Energy response to the Consultation Document on CUSC Amendment Proposal CAP146 'Responsibilities and liabilities associated with Third Party Works (TPW) and Modifications made by Modification Affected Users'

This response is made by British Energy Group plc. British Energy is the UK's largest generator of electricity. We own and operate eight nuclear power stations as well as Eggborough Power Station (a large coal plant with two units fitted with FGD) and four small embedded gas generator sites. We are a large supplier selling exclusively to Industrial and Commercial customers. British Energy Direct accounts for around 30TWh of the UK supply. British Energy welcomes the opportunity to respond to the above consultation.

British Energy strongly disagrees with the original amendment and WGAA-B as we do not agree with their retrospective allocation of liabilities. Investment decisions should be made on the rules currently in place and any retrospective changes may heighten future risk and cause investors to lose confidence in the process.

Of the alternatives proposed British Energy prefers WGAA-D which aims to clarify the process surrounding the existing arrangements. We believe that if a party requires work for their project that they should be responsible for any additional costs associated with it. It does not seem appropriate that all other parties face liabilities on behalf of another parties gain.

WGAA-D better facilitates the following CUSC objectives:

Efficient & Economic

We believe that WGAA-D will clarify the process for Users regarding the management of TPW such that National Grid can manage the process effectively on behalf of the Triggering Party. This is an important aspect of any proposed changes. We also believe that the costs associated with TPW should not be placed upon all users who would not necessarily obtain a benefit from the TPW assets.

Competition

WGAA-D facilitates competition as it will remove the requirement for a Triggering User to approach an incumbent user and codifies National Grid's process for TPW. This should speed up the process and cut down on the amount of paper work required.

To summarise, British Energy does not support the original proposal or WGAA-B due any prospect of retrospection. We do support WGAA-D as we believe it will facilitate competition and be more efficient and economic than the status quo or any of the other modifications proposed.

If you would like to discuss any of our response then please do not hesitate to contact me on 015452 652972 or John Morris on 01452 653492.

Yours sincerely

Rachel Lockley
Trading Consultant
Transmission and Trading Arrangements
British Energy Power and Energy Trading



Beverley Viney
Amendments Panel Secretary
Electricity Codes
National Grid
National Grid House
Warwick Technology Park
Gallows Hill
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Fax: +44 (0)207 659 6621
info@carronenergy.com

29th June 2007

Dear Ms Viney

CAP146 -Responsibilities and liabilities associated with Third Party Works and Modifications made by Modification Affected Users

Carron Energy (Carron) are the owners of Uskmouth Power and Severn Power. Carron welcomes the opportunity to comment on the consultation document for CUSC amendment proposal CAP146. Carron supports the principle of making the transmission owner (TO) responsible for works required to connect new parties to the transmission system.

CAP146 – Carron fully supports this amendment as we believe it better facilitates the applicable objectives specifically by:

- Reducing the barriers to entry and thus increasing competition.
- It is in line with the shallow connection policy, which we fully agree needs enhancing.
- It places the TO in charge of works that it is most likely to identify as being required, who is the expert in delivering them and who has a new partnership delivery contract which is meant to reduce transaction and build costs.
- It would improve the economic and efficient provision of connections by reducing costs that may arise due to TO design decisions.
- It would treat current and new projects in the same manner and thus ensure compensation is achieved via all users (ultimately customers) who will benefit most.
- Removing the requirement on a new entrant to potentially contract with parties he does not know or who are direct competitors.
- Reducing the one sided nature of the construction agreements, where the new entrant is in no position to question the lists of works provide by the TO and is not best placed to deliver those works either.

WGAA – A – Carron does not support this proposal as we believe it is discriminatory to only provide this service to new Construction Agreements issued and signed after the implementation date. We therefore do not believe that it will create economically efficient signals to all players by altering the costs associated with projects just starting compared to those that may commence after implementation. This would be detrimental to competition amongst new generators.

WGAA – B – Carron does not support this proposal as we believe the current costs of connection are extremely high and should be reduced by getting the TO to take responsibility for all work required to facilitate connections. TNUoS payers would all see some cost, but we believe

the benefits, out lined above, and specifically of reducing the barriers to new entry would outweigh these costs, reflected in end user prices. Customers ultimately benefit from market entry via increased competition and the development of more efficient, cleaner generation assets.

WGAA – C – Carron does not support this alternative for the reasons outlined above. However when compared to option C would be the better modification as it does not discriminate between new and existing users. Carron can see no justification for reducing costs to plant that asks for connection tomorrow when compare to another asking last month. It is vital any modification applies to all active agreements.

WGAA-D – Carron does not support this alternative as, while it usefully adds clarity, it does not address the defects that the original modification is trying to correct. Namely the high costs of connections and the position of the User in respect of identifying and delivering TPWs.

Carron believes that the original proposal best addresses the issues associated with TPW in the most efficient manner and without undue discrimination. We agree with the Proposer's points about the better achieving the applicable objectives.

If you have any questions about the points raised in this response please contact Lisa Waters on 020 8286 8677.

Yours sincerely

A handwritten signature in black ink that reads "Rebecca Williams". The signature is written in a cursive style with a large, stylized initial 'R'.

Rebecca Williams
Head of Trading

Your ref

Our ref

Emma Carr
Senior Commercial Analyst
Electricity Balancing and Codes
National Grid
National Grid House
Warwick Technology Park
Gallows Hill,
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e-mail: alan.creighton@ce-electricuk.com

11th July 2007

Dear Emma,

CUSC Amendment Proposal 146 – Third Party Works

I'm writing on behalf of Northern Electric Distribution Limited (NEDL) and Yorkshire Electricity Distribution plc (YEDL), the licensed electricity distributors of CE Electric UK Funding Company Ltd. This response is in relation to your email to me dated 5 July 2007.

We have considered whether to propose a Consultation Alternative and formed the view that there would be merit in a further discussion on the scope of works classed as Third Party Works and therefore would like to make a Consultation Alternative proposal.

Within the working group, there was a differentiation made between enabling works (those works required to be undertaken to enable the construction of transmission assets required to provide the connection to the connecting User) and consequential works (those works required as a consequence of the new User connection and which need to be undertaken before a User can become operational e.g. replacement of an existing Users equipment to cater for increased fault level). Making this distinction helped to identify that certain works e.g. securing wayleave for a new transmission circuit, the diversion of an overhead BT line or underground gas pipeline etc. may be required in order to construct the new transmission assets. I believe that arranging such works should form an integral part of the National Grid works to construct the transmission assets.

The cost of these works would be included as part of the costs of construction of the transmission assets i.e. either connection or infrastructure assets as appropriate, and recovered in the normal manner. It is our belief that such items of work are inextricably linked to the construction of the transmission assets and that they should therefore not potentially be included within the scope of Third Party Works.

This Consultation Alternative would be implemented by relatively minor changes to WAA – D as follows:

a) Section 11 – interpretation and definitions. Change the definition of Third Party Works to read:

“Third Party Works” In relation to a particular **User** those **Consequential Works**, defined as such in its **Construction Agreement**; being works undertaken on assets belonging to someone other than **The Company** or the **User** where such works are required as a consequence of connection to and/or use of the **GB Transmission System** by the **User**, and for the avoidance of doubt, excluding those works required by **The Company** to enable the construction of transmission assets required by **The Company** to provide the connection to the connecting **User**;

b) Standard form of the Construction Agreement (contained in Schedule 2 Exhibit 3). Change the definition of Third Party Works to read:

“Third Party Works” Consequential Works to be undertaken on assets belonging to a party other than **The Company** or the **User** as a consequence of the connection to and/or use of the **GB Transmission System** by the **User**, and for the avoidance of doubt, excluding those works required by **The Company** to enable the construction of transmission assets required by **The Company** to provide the connection to the connecting **User**;

c) In order to clarify those works classed as being ‘consequential’ a new definition of Consequential Works (as defined in the Consultation Document) is required:

“Consequential Works” Those works which are required as a consequence of the new **User** connecting and which need to be undertaken before a **User** can become operational.

It is our belief that this Consultation Alternative further enhances the Applicable CUSC objectives (a) and (b) as presented in section 6.3 of the May 26th CAP146 consultation document by clarifying National Grids role to undertake work that is directly associated with the construction of its own transmission assets.

Please contact me if there are any issues arising from this letter that would benefit from further clarification.

Yours sincerely

Sent by email 11 July 2007

Alan Creighton
Network Investment Lead Engineer

Beverly Viney
Amendments Panel Secretary
Electricity Codes
National Grid [National Grid House]
Warwick Technology Park
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CV34 6DA



29th June 2007

Dear Beverley,

CAP146: Third Party Works (TPW) and Modification Affected User Modifications (MUAM)

EDF Energy is pleased to have the opportunity to comment on the CAP146 proposals.

- Whilst we sympathise with the intentions of the Original and WGAA-A amendments, we consider current arrangements place the correct liability on connecting parties in regard to their impact on other users.
- We consider WGAA-D to be better than the baseline arrangements and recommend its implementation.
- We do not support WGAA-B and WGAA-C.

Our view can be summarised as:

1. TPWs could be considered to be inconsistent with shallow charging and clustering policy, but on balance are appropriate;
2. The management of TPWs by NGET allows it to fully assess the full value of works;
3. The motivation for developers to avoid projects liable for TPWs needs to be mitigated;
4. Should there be a need to modify the connection, where no triggering User is identified, existing Users should not have works paid for by NGET (socialised);
5. If Ofgem implements the Original or WGAA-A, it should reopen NGET's price control to fund TPWs;
6. WGAA-D proffers the most appropriate solution as it involves NGET in managing TPWs without completely revising existing intentions of the code.

There follows reasoning for our view. We hope these comments have been of help, if you have any questions please do not hesitate to ask.

Yours sincerely,

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OUR REASON FOR COMING TO THIS VIEW

1. TPWs could be considered to be inconsistent with shallow charging and clustering policy, but on balance are appropriate

After the introduction of PLUGs, the current charging regime classifies nearly all assets, including a generator spur circuit, as transmission assets. This results in the generator connecting into the system paying “shallow” investment costs for connecting into the system because charges are shared with other generation and demand Users.

The clustering principle is also “shallow” as it divides liabilities for shared works if numerous generation projects are connecting to the system. The contingent liabilities are shared, rather than the “triggering” User whose application necessitates the works.

TPWs allocate costs to the User assumed to have triggered the works, this is appropriate given that the changes are to other customer’s plant and equipment rather than to the transmission system and there is an identifiable triggering User.

2. The management of TPWs to NGET allows it to fully assess the full value of works

When assessing a connection application, NGET must try to offer the most economic and efficient connection. In providing an offer, NGET will usually specify, in App N of the Construction Agreement (CONSAG), that the new generator will have an affect on a Distribution Network operator’s (DNO) connection or other third parties’ systems. These works are not properly specified and valued, so there is potential NGET to ignore TPWs in the connection design. As NGET does not fully specify these in the original offer, any escalation in TPWs would not be assessed as part of the cost of connection and reinforcement. NGET needs to be more involved in the management of TPWs to ensure the most efficient and economic investment in the system.

3. The motivation for developers to avoid projects liable for TPWs needs to be mitigated

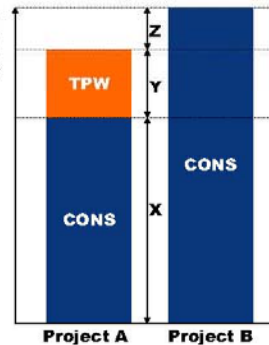
We believe that it is possible that the allocation of TPWs could motivate developers to avoid projects with such works.

The figure to the right shows how this could work. If we consider transmission works (CONS in the figure), which are recovered through the transmission owners’ regulated asset base, allowable revenue and subsequent TNUoS charges. These are split 27:73 between generation and demand. The charges are not allocated directly on the value [X] for Project A, but calculated through NGET’s charging methodology.

On the other hand, the TPWs (in orange) are paid for by the Triggering Party (the new generator).

If we consider Project A vs. B and assume that both are in comparable TNUoS charging zones:

- Although A’s works [X+Y] are lower than B’s, the direct cost of [Y] placed on A would incentivise the developer to build Project B.
- The TPWs would affect the NPV of Project A, which misses the theoretical 73% sharing with demand.
- The selection of Project B is uneconomic and may increase overall costs by [Z].



We do believe this can be mitigated if the GBSO (NGET supported by the TOs) takes a more proactive role in managing TPWs (as the WGAA-D proposal).



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4. Where no triggering User is identified, existing Users should not have works paid for by NGET (socialised), should there be a need to modify the connection.

The RWE proposals, WGAA-B and WGAA-C, state that the GBSO should be responsible for paying for (and then charging) TPWs, where no triggering party is identified. It presumes that an existing User should have no future liability for adapting its connection to what is a dynamic interconnected transmission network. We believe that this is not reasonable as generators should expect to adapt their grid connection should the system change. It is unreasonable not to expect such a change over 30 years of operation of a power station.

5. If Ofgem implements the Original or WGAA-A, it should reopen NGET's price control to fund TPWs.

NGET considers that TPWs could total £84m (in England and Wales) over the next five years. If any proposal other than WGAA-D were to be put into effect then it would be necessary for Ofgem to reopen the transmission price control to take account of the increased capital expenditure that will be required.

6. WGAA-D proffers the most appropriate solution as it involves NGET in managing TPWs without completely revising existing intentions of the code.

WGAA-D proffers the most appropriate solution as it involves NGET in managing TPWs without completely revising existing intentions of the code

The current intention of the code is that for works required of NGET and the other transmission companies, the connecting generator should be held liable in paying TNUoS charges. For works that are not completed by the TOs the code specifies that the User should pay for these directly, either if these works are at on another's system or on that User's system. Although this intention does, in some way, act contrary to "shallow" charging policies, on balance we consider TPWs should remain a direct liability for the User, rather than a chargeable cost.

This does not mean that we believe there is no defect with the current code, which is ambiguous in how TPWs should be managed and fails to properly involve the GBSO in the management of the works. The WGAA-D should improve the management of TPWs between the Users affected, without revising the appropriate intentions of the code.



Mod		Description	Consideration	Support
Original	E.ON	TPWs placed upon NGET for all CONSAGs	Consistent with shallow charging and clustering policies – allows NGET to fully assess the full value of works to ensure economic and efficient judgement is made.	No
WGAA-A	E.ON	As original, for prospective CONSAGs	As above, however prospective element inherently unfair on Users with TPWs yet to be completed	No
WGAA-B	RWE	TPWs upon triggering User (or NGET if no triggering User), limited to connection point	Costs being allocated to Triggering User leads to perverse incentive for developers to avoid building station on the basis of allocation of TPWs. Where no triggering User is identified, existing Users should not have works paid for by NGET (socialised), should there be a need to modify the connection.	No
WGAA-C	RWE	As [B], for prospective CONSAGs	As above, however prospective element inherently unfair on Users with TPWs yet to be completed	No
WGAA-D	NGET	TPWs upon triggering User, NGET involved	Improves process and current ambiguity, maintaining the current arrangements placing the correct liability on connecting parties in regard to their impact on other users. Maintains current intention of the code.	Yes

*D better than baseline arrangements

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28 June, 2007

Dear Beverley,

CAP146 – Responsibilities and liabilities associated with Third Party Works and Modifications made by Modification Affected Users – Consultation Document

Thank you for the opportunity to respond to the above consultation document.

We support the proposed original amendment and Working Group Alternative A. We do not support the other alternatives.

The Defect: Third Party Works and Modification Affected User Modifications

As you know we raised CAP146 as we believe that the present Third Party Works (TPW) arrangements under the Construction Agreements are not specifically defined and that the Modification Affected User Modifications (MAUMs) provisions under 6.10.3 of the CUSC are inappropriate.

We disagree with National Grid's interpretation of the Construction Agreements, that TPW are a User's responsibility to procure, as we believe that a User is only responsible for the User's Works as defined under the agreements. The definition of User's Works clearly states that they are "*those works necessary for installation of the User's Equipment*". The definition of User's Equipment states that it refers to "*the Plant and Apparatus owned by a User*". TPWs are works on the Transmission System and are not required to install the User's Equipment. Therefore, TPW cannot be part of User's Works. As a User is only responsible for User's Works under the Construction Agreement, they therefore cannot be responsible for TPW.

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However, although it is clear that TPW are not part of a User's Works, they are in a weaker position than National Grid bargaining wise. This is because the TPW have to be completed before the User's connection can be energised. If they are not completed the User cannot use its power station. National Grid has nothing to lose if negotiations come to a stalemate, so all the pressure is on the User to back down in such circumstances.

The present National Grid interpretation that TPW are the User's responsibility and the current MAUMs arrangements that require a connecting party to pay the costs of other Users' Modifications, are unfairly disadvantaging the parties who are affected. This is because they are effectively being charged deep reinforcement costs for part of the transmission works associated with their connection, whereas other connecting parties are being charged on a shallow basis. The difference between the two cases is simply due to the fact that in the first the parties are unfortunate that their transmission reinforcement design involves TPW or MAUMs.

This is not to say that we disagree with the principle that if someone causes a cost to be incurred that they should pay for it. However, in 2004 National Grid implemented a shallow charging policy the "plugs" methodology. This approach to charging does not directly charge specific costs of infrastructure works required for each User. Instead these costs are largely socialised. In the place of direct cost allocation, the location specific element of TNUoS charges signals the cost effect of generators' connection decisions. Our concern is that this methodology is not applied uniformly to all Construction Agreements as TPW are excluded. However, there is nothing intrinsic about TPW that means that they should be allocated in this inconsistent manner. TPW and MAUMs are simply costs that are incurred as a result of a particular transmission reinforcement design. It appears to be simply a matter of administrative convenience for National Grid that they are treated differently.

The present treatment effectively shifts the problem of procuring these works to the User. There is no reason why the User is the best party to deal with them. Indeed, facilitating reinforcement of the transmission network is National Grid's day to day role and area of expertise, not that of distribution or generation companies. Therefore, National Grid should be facilitating all necessary works required to allow it to carry out its role. This is what we mean by a one-stop-shop.

The different treatment of Users with TPW or MAUMs associated with their Construction Agreements, compared with other Users, means that they are discriminated against. As there is nothing intrinsic about TPW and MAUMs justifying this different treatment, we would argue that the present interpretation of TPW leads to undue discrimination against some parties.

Essentially, these issues with TPW act against the applicable CUSC objectives in a number of ways. Competition is damaged as Users are randomly hit with deep costs within an otherwise shallow charging methodology. This acts as a barrier to entry and the affected Users are discriminated against. Additionally, as they pay a proportion of other parties' infrastructure costs through socialisation, whilst their costs are not reciprocally socialised, an element of cross subsidy is created. This again is detrimental to competition.

Efficiency is affected too. At present, the disagreement between National Grid and Users is the cause of considerable effort in the industry in discussing and disputing the terms of their agreements. The clarification of the arrangements would remove the cause of an unnecessary complication in the current Connection and Use of System arrangements.

National Grid's Initial View

We would also like to take the opportunity to respond on the initial view of National Grid outlined in the consultation document.

National Grid states that its alternative would clarify the position with respect to TPW and thereby maintain the one-stop-shop principle. Whilst the position may be clarified by the alternative it would actually undermine the one-stop-shop principle. Paragraph 5.8 iii) of the consultation states that under this alternative "*The Triggering User would be responsible for procurement, delivery of the works, the risk of non-delivery, and the associated costs.*" Therefore, the connecting party would be required to contact other parties to arrange for the TPW to be carried out and also contract with National Grid for the remainder of the works. By no stretch of the imagination could this be described as a one-stop-shop.

Paragraph 12.2 of the initial view states that the amendment would breach a fundamental principle of the CUSC that parties would bear the costs of modifications required as a result of changes on the transmission system. Whilst this may be a principle under 6.9 and 6.10 of the CUSC for Modifications made by Modification Affected Users, it is by no means clear that this extends to the general case of TPW under the Construction Agreement. It is also a little inaccurate to describe this as a fundamental principle. Admittedly, CAP146 seeks to change this principle in respect of paragraphs 6.9 and 6.10. However, it is by no means clear that the CUSC is founded on this principle or that the Code would become invalid if this amendment were to be implemented.

At the end of paragraph 12.2 of the consultation it states that in respect of the principles in 6.10.3 of the CUSC, where a triggering User is required to pay for the costs of a Modification, "*it was considered appropriate that the costs incurred by the existing user for National Grid to maintain compliance with the SQSS*" should "*be borne by the new User.*" The concept of a User incurring costs to ensure that National Grid maintains compliance with the SQSS is an odd one and would certainly seem to undermine a fundamental principle, which is that the SQSS sets out the requirements on Transmission Licensees not Users. National Grid should bear the costs of meeting its own obligations not require others to do so. CAP146 is completely in accordance with this particular principle.

Paragraph 12.3 of the consultation states that under CAP146 "*once a User is connected any changes to their equipment or system linked to a change on the transmission system would be procured by National Grid until the User was de-commissioned.*" This is not strictly correct. Under CAP 146 National Grid would be responsible for works required under Construction Agreements and the costs of any Modifications required as a result of a Modification Notification issued by National Grid under 6.9.1 of the CUSC. The definition of Modification under the CUSC says "*any actual or proposed replacement,*

*renovation, modification, alteration, or construction by or on behalf of a **User or The Company** to either the **User's Plant or Apparatus** or the manner of its operation or **Transmission Plant or Transmission Apparatus** or the manner of its operation which in either case has or may have a **Material Effect** on another **CUSC Party** at a particular **Connection Site**". Therefore, a Modification can be a change to a User's equipment, but that it must have a Material Effect on another CUSC Party. It does not apply to all works and alterations on the User's plant.*

Therefore, to summarise, CAP146 will apply to:

- a) Works required under Construction Agreements.
- b) Alterations made to User's equipment or the Transmission System, which have a material effect on another CUSC Party and are as a consequence of Modification Notifications issued by National Grid.

It is therefore not as wide reaching as implied in National Grid's initial view.

The comment in paragraph 12.4 of the consultation that they would require a change to the price control to allow them to undertake TPW may well be correct. Clearly, this is an issue for Ofgem and the transmission licensees. However, this should not be an impediment to CAP146. We note that the price controls of all three transmission companies were reopened to deal with TIRG costs. There was clearly the will and ability to do so in those circumstances, so presumably it is possible in this instance.

The statement in paragraph 12.5 of the consultation document that an underlying assumption of CAP146 is that TPW should be recovered through TNUoS charges is not quite accurate. Our position on CAP146 has always been that TPW should be recovered through National Grid's charges. However, if TPW are undertaken which clearly relate to a connection asset as defined under the 'Plugs' methodology, then this should be recovered through the relevant connection charges. In the second part of the paragraph a distinction is made between transmission works and TPW. In the case of transmission works it states that it "*is clear that the cost of transmission works have been assessed as part of a price control process and it is within National Grid's expertise and competence to deliver works in line with these regulated costs*", whereas for TPW it is stated that this "*may not be the case for TPW, the provision of which could be undertaken by any competent party.*" We accept that there may need to be some form of reopening of the price control as discussed above. The second part of the argument we do not understand. It is unclear why National Grid would be precluded from procuring TPW if they can be provided by any competent party. We would argue that National Grid is as competent as any User to procure these works, if not more so. Indeed, we understand that National Grid has already created alliances with most, if not all, of the major constructors in the country. This would seem to put it in an ideal position to procure many of these works.

We do not agree that it can be proven that costs have been efficiently incurred in the case of TPW if a User agrees to pay them. The User very often has no choice but to accept the TPW, or the connection and thus its project will not be built.

With reference to paragraph 12.7 of the consultation we accept that National Grid would be required to negotiate TPW within the restrictions of its licence so that it can be seen to act economically and efficiently. This is no different from any negotiations that it carries out to procure the completion of transmission works. It is not clear that this would preclude the advancement of works should the User be willing and able to pay extra to do so. We would expect this to be catered for and charged appropriately under the existing One Off Works arrangements, which already provide for the advancement of transmission works at the User's request.

Paragraph 12.8 of the consultation document argues that National Grid is not the best party to be responsible for TPW, as the nature and cost of the works may not be certain within the three month window that National Grid has to issue offers to Users. However, there are presumably a number of elements which are not finalised when offers are made. If CAP146 were approved TPW would be another. It is not clear why this would preclude National Grid from procuring the TPW.

We agree to an extent with National Grid's concerns about the implementation date for the original amendment and Alternative B. However, it must be made clear that neither option actually proposes a retrospective implementation as implied by paragraph 12.9 of the consultation. The original amendment recommended a prospective implementation under which the CAP146 arrangements would be applied to existing active Construction Agreements in accordance with paragraph 15.2 of those agreements. Indeed, this is consistent with National Grid's proposed implementation approach for amendments such as CAP131 and CAP150, which also involves changing existing agreements. Nevertheless, we agree that an implementation approach that applies the new arrangements to Offers made after the implementation date would be administratively preferable. This is why we proposed and support Alternative A.

Finally, we would like to respond to a comment on CAP146 that it would result in other Users paying for costs from which they would derive no benefit. Why would the benefit of transmission reinforcement works change simply because the chosen solution involved TPW? This appears to be a criticism of a shallow charging methodology per se, not specifically of CAP146. Our view on this remains that TPW are an issue as some Users are being hit with random deep costs within what is otherwise a shallow charging methodology, simply because the relevant works in their Construction Agreements include work on assets owned by third parties. This is inconsistent, unfair and discriminates against these Users, particularly as they pay the socialised costs of reinforcement work associated with other Users' connections.

Our views on the various options raised are as follows:

Original Amendment – Clearly as the party proposing CAP146 we believe that it better facilitates the applicable CUSC objectives. Implementation of the original amendment would address both elements of the defect by providing explicit obligations in respect of TPW, and appropriate responsibilities on National Grid with respect to both TPW and MAUMs. We do however concede that the implementation approach of introducing the CAP146 arrangements into each existing live Construction Agreement could prove problematic. As this formed part of the original amendment proposal, we proposed

Working Group Alternative Amendment (WGAA) A.

WGAA A – As we mention above, we believe that the implementation approach specified for CAP146 could prove problematic. Therefore, we believe this option whereby only Construction Agreements issued after the Implementation Date are changed to reflect CAP146, is more appropriate. This is our favourite option.

WGAA B – This option only seeks to meet one element of the defect which is to explicitly state the responsibilities associated with TPW and MAUMs. It does not address the element of the defect relating to the inappropriate requirement for the relevant User to be responsible for TPW and MAUMs. Therefore, we do not believe that this option better meets the applicable CUSC objectives.

WGAA C – This option only differs from WGAA B in its implementation approach. This is an insufficient improvement to make it better than the present baseline. We therefore believe that this WGAA does not better meet the applicable CUSC objectives.

WGAA D – This option like WGAA C and D does not seek to address the element of the defect regarding inappropriate requirements on connecting Users to organise MAUMs or National Grid's inappropriate interpretation of TPW in the Construction Agreements. We therefore do not believe that it better meets the applicable CUSC objectives.

I hope that the above comments prove helpful.

Yours sincerely

Paul Jones
Trading Arrangements

RWE Trading



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■ 5th June 2007

Dear Beverley

**Consultation Document – CUSC Amendment Proposal CAP146
Responsibilities and liabilities associated with Third Party Works and modifications made by
Modification Affected Users**

Thank you for the opportunity to comment on the CAP146 Consultation. We were pleased to participate in the working group which considered the original amendment proposal and the alternative amendment proposals. The following comments on the Original Proposal and the Working Group Alternatives presented in the Consultation Paper are provided on behalf of the RWE group of companies.

Original CAP146 proposal and WGAA-A

We do not support these proposals and do not believe they better facilitate achievement of the Applicable CUSC Objectives. We believe that the triggering User should meet the cost of third party works such that they would be exposed to the full economic cost of their actions. These costs would otherwise feed through into increased TNUoS charges that would have to be borne by all other Users. Furthermore, given that third party works do not include work on the GB Transmission System and their cost is not reflected in an increased transmission system asset value, it is not appropriate for the cost of these works to be met by other Users.

WGAA-B

We support this amendment and believe it would better facilitate achievement of the Applicable CUSC Objectives for the following reasons:-

- 1) The impact of a modification carried out by a triggering User on another User is technically no different from the impact on that User of a modification carried out to the GB Transmission System by National Grid. We therefore believe that the compensation provisions set out in CUSC 6.9 & 6.10 should similarly

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apply should National Grid be the triggering party. We would expect that, in most circumstances, National Grid would also be incentivised to identify the triggering User such that National Grid would not be exposed to the cost of compensation.

- 2) Exposing National Grid to the cost to these works would incentivise it to ensure that any Modifications to the GB Transmission System were designed to minimise the overall cost to both National Grid and all other Users
- 3) The obligations placed on Users via the Construction Agreement relating to third party works are currently independent of the provisions of CUSC 6.9 & 6.10. It would assist Users to define "third party works" within the CUSC and to clarify the relationship between the provisions of the construction agreement and CUSC in relation to third party works.
- 4) We are concerned with the lack of clarity in both CUSC 6.9 & 6.10 and the Construction Agreements regarding the extent of the liability of the triggering User for the cost of third party works. We believe it would be sensible for these costs to be limited to works at the voltage of connection to the transmission system only.

WGAA-C

We support this amendment based on WGAA-B and believe it would better facilitate achievement of the Applicable CUSC Objectives. However, unlike WGAA-A, we do not agree that it should only apply to Users who have not yet signed a construction agreement as proposed by this alternative. This would introduce discriminatory treatment between Users and also a transitional period of uncertainty for developers.

WGAA-D

We support this amendment and believe it would facilitate achievement of the Applicable CUSC Objectives. However, whilst we welcome the clarification of third party works and their relationship with the CUSC and construction agreements, we are concerned that, when compared to WGAA-B or WGAA-C, it fails to clarify the extent of the third party liabilities a new User might be exposed to when seeking connection to the transmission system. This alternative does not better facilitate achievement of the Applicable CUSC Objectives when compared to WGAA-B or WGAA-C.

For the avoidance of doubt, our order of preference for the changes proposed under this consultation is as follows :-

1st preference: WGAA-B

2nd preference: WGAA-C

3rd preference: WGAA-D

RWE does not support either the Original Proposal or WGAA-A.

If you wish to discuss any aspect of our response, please do not hesitate to contact me.

Yours sincerely

By e-mail

John Norbury
Network Connections Manager

Dear Sirs,

This response is sent on behalf of Scottish and Southern Energy, Southern Electric, Keadby Generation Ltd., Medway Power Ltd., and SSE Energy Supply Ltd.

In relation to the consultation concerning the report associated with the Consultation for CAP146 "Responsibilities and liabilities associated with Third Party Works and Modifications made by Modification Affected Users" (contained within your note of 25th May 2007).

We do not agree that the Original or WGAA B would better facilitate the achievement of the Applicable CUSC Objectives as they are, in our view, a retrospective change which fail to conform with the three part Ofgem 'retrospective test' criteria.

Whilst we appreciate the concern raised in CAP146 we are also mindful to avoid a 'blank cheque' situation arising where National Grid is obliged (at whatever cost?) to pay for third party works. We also believe that there is insufficient justification for any party other than the 'Triggering Party' having responsibility for the costs associated with Third Party Works.

We have therefore concluded that WGAA D would better facilitate the achievement of the Applicable CUSC Objectives. In addition, this proposal will promote greater clarity in respect of the process management of any works.

Kind Regards

Rhona McLaren
on behalf of

Garth Graham
Scottish and Southern Energy plc



Legal & Commercial

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Your ref.

Our Ref

Date

29 Jun 2007

Contact / Extension

Paul McGimpsey /
01698-413174

**Consultation Document - CUSC Amendment Proposal CAP146
Responsibilities and Liabilities associated with Third Party Works and Modifications
made by Modification Affected Users**

Dear Beverley,

Thank you for the opportunity to respond to Consultation Document CAP146. This response is submitted on behalf of ScottishPower Energy Networks (SPEN), which includes the licensed distribution network owning businesses SP Distribution Limited and SP Manweb PLC.

SPEN does not support either the Original CAP146 proposal or the Working Group Alternative Amendments WGAA-A, WGAA-B or WGAA-C. SPEN shares the views of National Grid that the triggering User should be exposed to the costs associated with Third Party Works arising as a result of its connection or Modification. SPEN does not believe that levying such costs on the industry at large, through TNUoS charges or otherwise, will send out the correct financial signals to those seeking new or modified connections to the GB Transmission System. SPEN does not believe that any of these amendments better achieves the applicable CUSC objectives and considers therefore that they should not be implemented.

SPEN does, however, consider there to be benefit in National Grid being responsible for the managing of certain aspects of these works, as follows:

In respect of Third Party Works, SPEN considers that National Grid is best placed, in the overall coordination of its transmission system works, to carry out or procure the carrying out of Third Party Works in circumstances where those works directly impact on the physical transmission asset construction works. In such circumstances SPEN considers that the User should be liable to pay, to National Grid (in much the same way as One-off Works are currently charged) for any costs incurred by National Grid in the carrying out / procuring of



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those works being carried out, including any compensation National Grid is required to pay to third parties.

For the avoidance of doubt, the User should retain responsibility for carrying out any works that do not directly impact on the physical transmission asset construction works and any associated costs of those works.

In respect of Modifications made by Affected Users, National Grid should retain responsibility for notifying the Affected User of the Modification. SPEN considers National Grid is best placed, in its overall coordination of its transmission system works, to ensure that the Affected User carries out those works. In such circumstances, the User should be liable to pay any compensation due to the Affected User as a result of the Affected User having had to carry out those works.

Finally, in respect of Working Group Alternative Amendment WGAA-D, SPEN supports any proposal that seeks to clarify respective responsibilities within the CUSC.

Please do not hesitate to contact me with any queries on the points raised.

Yours sincerely,



Paul McGimpsey
Senior Commercial Analyst

This Annex includes copies of any representations received following circulation of the Consultation Document (circulated on 12th July 2007 requesting comments by close of business on 26th July 2007).

Representations were received from the following parties:

No.	Company	File Number
1	CE Electric UK	CAP146-CAAR-01
2	E.ON UK	CAP146-CAAR-02
3	Scottish Power Energy Networks	CAP146-CAAR-03



Your ref

Our ref

Emma Carr
Senior Commercial Analyst
Electricity Balancing and Codes
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National Grid House
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Network Investment

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WF10 5DS

<http://www.ce-electricuk.com/>

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fax: 01977 605594

e-mail: alan.creighton@ce-electricuk.com

16th July 2007

Dear Emma,

CUSC Amendment Proposal 146 – Third Party Works

I'm writing on behalf of Northern Electric Distribution Limited (NEDL) and Yorkshire Electricity Distribution plc (YEDL), the licensed electricity distributors of CE Electric UK Funding Company Ltd. This response is in relation to the Consultation Alternative Consultation Document dated 12th July 2007.

Thank you for preparing the Consultation Alternative Consultation Document based on my comments to the previous consultation. I can confirm that we support the Consultation Alternative and believe that of the amendments considered it best meets the relevant CUSC objectives.

Yours sincerely

Sent by email 16th July 2007

Alan Creighton
Network Investment Lead Engineer



Beverley Viney
Amendments Panel Secretary
Electricity Codes
National Grid
National Grid House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

E.ON UK plc
Westwood Way
Westwood Business Park
Coventry
CV4 8LG
eon-uk.com

Paul Jones
024 76 183 383

paul.jones@eon-uk.com

20 July, 2007

Dear Beverley,

CAP146 – Responsibilities and liabilities associated with Third Party Works and Modifications made by Modification Affected Users – Consultation Alternative Consultation Document

Thank you for the opportunity to respond to the above consultation document.

E.ON UK supports the above Consultation Alternative Amendment, although we still prefer WGAA A and the original amendment.

This alternative seeks to address one part of the defect identified in CAP146 by making National Grid responsible for organising and paying for a specific subset of Third Party Works. You will recall that the defect that CAP146 seeks to address consists of two parts and can be summarised as:

1. The Construction Agreement does not explicitly state who is responsible for organising and paying for Third Party Works. National Grid's interpretation that it is the User's responsibility is inappropriate.
2. The provisions in 6.10.3 of the CUSC that require a User to pay for Modifications that result from its own Modification request are inappropriate and inconsistent with a shallow access regime.

The Consultation Alternative addresses the first part of the defect in a more appropriate

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manner than WGAA D, the Working Group Alternative Amendment on which it is based. WGAA D seeks to address only a very small part of the defect by specifying the responsibility for organising and paying for Third Party Works. We believe however that WGAA D is worse than the present baseline as it seeks to enshrine National Grid's view that this is the User's responsibility. This is a position that is unacceptable, as it is wholly inappropriate for the User to become directly involved in the construction of transmission infrastructure works in this manner.

The Consultation Alternative specifies that Third Party Works should be organised and paid for by the User, but excludes from the definition of Third Party Works those works that are required to provide the connection to the User concerned. Therefore, an important subset of Third Party Works is in our opinion treated appropriately by this alternative.

Of course, this still leaves some elements of the defect to be addressed. For instance, the provisions of 6.10.3 would still inappropriately require Users to pay for Modifications made by Modification Affected Users. Therefore, our preference would still be for the WGAA A and Original Amendment proposals. However, this Consultation Alternative Amendment would certainly better meet the applicable objectives than the present baseline.

I hope that the above comments prove helpful.

Yours sincerely

Paul Jones
Trading Arrangements



Legal & Commercial

Your ref.

Our Ref

Date

26 July 2007

Contact / Extension

Paul McGimpsey /
01698-413174

Beverley Viney
Amendments Panel Secretary
Electricity Codes
National Grid
National Grid House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

**Consultation Alternative Consultation Document
CUSC Amendment Proposal CAP146
Responsibilities and Liabilities associated with Third Party Works and Modifications
made by Modification Affected Users**

Dear Beverley,

Thank you for the opportunity to respond to the CUSC Amendment Proposal CAP146. This response is submitted on behalf of ScottishPower Energy Networks (SPEN), which includes the licensed distribution network owning businesses SP Distribution Limited and SP Manweb PLC.

I would advise that, following a review of the Consultation Alternative, SPEN is unsupportive of the proposed amendments to the WGAA – D legal text. SPEN's view is that the triggering User should be exposed to all costs associated with Third Party Works arising as a result of its connection or Modification, regardless of whether they be classed as "enabling" or "consequential" works. SPEN does not believe that levying elements of these costs on the industry at large, through TNUoS charges or otherwise, will send out appropriate financial signals to those seeking new or modified connections to the GB Transmission System. SPEN does not therefore believe that the proposed amendment better achieves the applicable CUSC objectives and considers therefore that it should not be implemented.

SPEN's views regarding responsibilities for managing Third Party works remains as per our response to the original consultation.



New Alderston House, Dove Wynd, Strathclyde Business Park, Bellshill ML4 3FF
Telephone 01698 413000 Fax 01698 413070

SP Power Systems Limited Registered Office: 1 Atlantic Quay Glasgow G2 8SP
Registered in Scotland No. 215841 Vat No. GB 659 3720 08

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Please do not hesitate to contact me with any queries on the points raised.

Yours sincerely,



Paul McGimpsey
Senior Commercial Analyst

ANNEX 5 – REPRESENTATIONS RECEIVED UPON THE DRAFT AMENDMENT REPORT

This Annex includes copies of any representations received following circulation of the Draft Amendment Report (circulated on 15th August 2007, requesting comments by close of business on 22nd August 2007).

Representations were received from the following parties:

No.	Company	File Number
1	CE Electric	CAP146-AR-01



Your ref

Our ref

Beverley Viney
CUSC Panel Secretary
Commercial - Transmission
National Grid
National Grid House
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15th August 2007

Dear Beverley,

CUSC Amendment Proposal 146 – Third Party Works

I'm writing on behalf of Northern Electric Distribution Limited (NEDL) and Yorkshire Electricity Distribution plc (YEDL), the licensed electricity distributors of CE Electric UK Funding Company Ltd. This response is in relation to your industry wide consultation dated 15th August 2007.

CE Electric UK, as the proposer of the Consultation Alternative Amendment, continues to support the Consultation Alternative Amendment as the preferred solution. In the opinion of CE Electric UK, the Consultation Alternative Amendment best achieves the CUSC Applicable Objective by increasing clarification with regard to cost recovery while not unnecessarily putting additional costs on other CUSC parties not affected by the proposed customer connection.

We recognise National Grid's concerns over ensuring that the 'polluter pays' for third party works. We believe that this can readily be, and is perhaps more appropriately, dealt with in the charging methodology. There seems to us to be no reason why the costs that National Grid would incur in undertaking Third Party Works could not be recovered as connection charges from the triggering User.

Yours sincerely

Sent by email 16 August 2007

David van Kesteren

CE ELECTRIC UK FUNDING COMPANY

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