

<b>CUSC Amendment Proposal Form</b>	<b>CAP:179</b>
<b>Title of Amendment Proposal:</b>	
Prevention of "Timing Out" of Authority decisions on Amendment Proposals	
<b>Description of the Proposed Amendment (mandatory by proposer):</b>	
<p>This Amendment Proposal seeks to remove the potential for an Authority decision on an Amendment Proposal to "time out". "Timing out" occurred within the industry in 2007 when the Authority was unable to provide its decision on BSC Modification Proposals P198, P200, P203 and P204 before the final date allotted for such a decision in the Final Modification Report. A subsequent Judicial Review ruled that when the Authority did not make its decision by the latest date included in the Final Modification Reports, it lost the ability to make any decision on those Proposals.</p> <p>Following the Judgement, Ofgem issued a number of industry consultations, the most recent of which, in May 2009, included indicative modifications to National Grid's Transmission/Transporter licences to try and prevent "timing out" reoccurring. The indicative drafting required changes to be raised to the BSC, CUSC and UNC modification processes.</p> <p>National Grid recognises the issues raised by respondents during the industry consultations related to timing out. While we acknowledge that "timing out" has not been an issue to date for the CUSC, we consider that raising an Amendment Proposal is an efficient way for the industry to address the issues raised. Following the proposals we have already raised to modify the BSC and UNC, National Grid proposes the following amendment to the CUSC.</p> <ol style="list-style-type: none"> <li>1) In line with current working practice for the CUSC, the Amendments Panel should, wherever possible, propose Implementation Dates using the construction "XX business days or XX months after receipt of an Authority decision", which would prevent "timing out" occurring.</li> <li>2) In recognition that, for some proposals, a "fixed" implementation date (with an associated decision by date) may be preferable, for example where there are system development requirements, we propose that the Panel should be mindful of the potential for "timing out" when setting proposed Implementation Dates. <p>Where a "fixed" Implementation Date is proposed, we consider that a process should be formalised within the CUSC whereby the Authority, upon identifying that it will be unable to meet a "decision by"/Implementation Date, writes to the Panel setting out its reasons for not meeting such a date and requesting a revised set of dates. Upon receipt of such a notification, we propose that the Panel would consult with the industry on the following:</p> <ol style="list-style-type: none"> <li>a) a revised set of implementation dates;</li> <li>b) whether the industry considers there to be any other relevant time-bound issues arising, for example, any issues relating to the "expiry" of any supporting analysis that was undertaken to support the original Amendment Report sent to the Authority.</li> </ol> </li> <li>3) Finally, to address the issue of timely decision making raised by industry participants, we propose that a new process be introduced whereby, following receipt by the Authority of a final Amendment Report, the Panel Secretary, at the request and on behalf of the Amendments Panel, may write to the Authority to request the Authority to give an indication of the likely date by which the Authority's decision on an Amendment Proposal shall be made. This process could be triggered either by a set period of time elapsing or by the Amendments Panel raising a reasonable concern related to the pending Amendment Proposal, for example that the analysis may soon become out of date.</li> </ol> <p>Parts 2 and 3 above are similar to the process that exists within the UNC modification procedures, which is reproduced for reference in the attachment to this Amendment Proposal. National Grid also draws the industry's attention to the "send back" powers proposed by Ofgem in its Code Governance Review Initial Proposals. Our interpretation of these powers are that the Authority would have the ability to request additional analysis, information or a revised timetable where it is unable to make a decision on an Amendment Proposal against the relevant objectives, and to request a revised final</p>	

Amendment Report which could include a revised Amendments Panel Recommendation Vote based upon the updated information produced.

**Description of Issue or Defect that Proposed Amendment seeks to Address** *(mandatory by proposer):*

This Amendment Proposal seeks to address three issues:

- 1) "Timing Out" of Authority decisions on Amendment Proposals.  
A description of the circumstances which can cause "timing out" is included in the section above. The result of "timing out" is to cause uncertainty among the industry as to the future of an Amendment Proposal, as well as the timescales surrounding that proposal. It also has the potential to waste resources in terms of the costs incurred by industry participants in raising and considering an Amendment Proposal which may then "time out".
- 2) Concerns over timely decision making.  
During Ofgem's consultations on "timing out", industry participants raised concerns over timely decision making. National Grid seeks to address this by formalising a process whereby the Amendments Panel may write to the Authority to highlight where a decision has not been provided, either within a given timeframe or where certain conditions are met.
- 3) Ongoing validity of industry analysis supporting a Panel recommendation.  
A further concern raised by industry participants was that, where a significant period of time has elapsed between a recommendation being provided to the Authority and the Authority making a decision, the underlying circumstances will have changed and any supporting analysis may be out of date. The proposal provides a mechanism for the Panel to consult industry participants on time-related concerns which could include the validity of analysis where a period of time has passed since its completion.

**Impact on the CUSC** *(this should be given where possible):*

Amendments will be required to section 8 of the CUSC.

**Impact on Core Industry Documentation** *(this should be given where possible):*

None identified.

**Impact on Computer Systems and Processes used by CUSC Parties** *(this should be given where possible):*

There should be minimal impact on systems and processes used by CUSC Parties, given that it is anticipated that in the majority of cases, the existing Implementation Date structure of "XX days after an Authority decision" will be used, therefore this represents no change to the status quo.

**Details of any Related Modifications to Other Industry Codes** *(where known):*

BSC P250: Prevention of "Timing Out" of Authority decisions on Modification Proposals  
UNC 0281: Prevention of "Timing Out" of Authority decisions on Modification Proposals

**Justification for Proposed Amendment with Reference to Applicable CUSC Objectives\*\*** *(mandatory by proposer):*

National Grid considers that implementation of this Amendment Proposal would better facilitate Applicable CUSC Objective (a): *"the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence"*, specifically with regard to the obligation under standard condition C10 of the licence, as follows:

6. *The licensee shall establish and operate procedures for the modification of the CUSC (including procedures for modification of the modification procedures themselves), so as to better facilitate achievement of the applicable CUSC objectives, which procedures shall provide [...]:*  
[...]  
*(c) for the timetable (referred to in sub-paragraph (b)(v)) for implementation of any*

*modification to be such as will enable the modification to take effect as soon as practicable after the Authority has directed such modification to be made, account being taken of the complexity, importance and urgency of the modification, **and for that timetable to be extended with the consent of or as required by the Authority.***

This Amendment Proposal seeks to clarify and formalise the arrangements by which an implementation timetable could be extended as described above and therefore better meets Applicable CUSC Objective (a).

<b>Details of Proposer:</b> Organisation's Name:	National Grid Electricity Transmission plc
<b>Capacity in which the Amendment is being proposed:</b> (i.e. CUSC Party, BSC Party or "National Consumer Council")	CUSC Party
<b>Details of Proposer's Representative:</b> Name: Organisation: Telephone Number: Email Address:	Alex Thomason National Grid Electricity Transmission plc 01926 656379 Alex.thomason@uk.ngrid.com
<b>Details of Representative's Alternate:</b> Name: Organisation: Telephone Number: Email Address:	Bushra Akhtar National Grid Electricity Transmission plc 01926 655223 Bushra.akhtar@uk.ngrid.com
<b>Attachments (Yes):</b> <b>If Yes, Title and No. of pages of each Attachment:</b>	Paragraph 9.5 of the UNC Modification Rules, version 3.04, dated 17 April 2009 (1 page)

**Notes:**

1. Those wishing to propose an Amendment to the CUSC should do so by filling in this "Amendment Proposal Form" that is based on the provisions contained in Section 8.15 of the CUSC. The form seeks to ascertain details about the Amendment Proposal so that the Amendments Panel can determine more clearly whether the proposal should be considered by a Working Group or go straight to wider National Grid Consultation.
2. The Panel Secretary will check that the form has been completed, in accordance with the requirements of the CUSC, prior to submitting it to the Panel. If the Panel Secretary accepts the Amendment Proposal form as complete, then he will write back to the Proposer informing him of the reference number for the Amendment Proposal and the date on which the Proposal will be considered by the Panel. If, in the opinion of the Panel Secretary, the form fails to provide the information required in the CUSC, then he may reject the Proposal. The Panel Secretary will inform the Proposer of the rejection and report the matter to the Panel at their next meeting. The Panel can reverse the Panel Secretary's decision and if this happens the Panel Secretary will inform the Proposer.

The completed form should be returned to:

Bali Virk  
Commercial  
National Grid  
National Grid House  
Warwick Technology Park  
Gallows Hill  
Warwick  
CV34 6DA

Or via e-mail to: [Bali.Virk@uk.ngrid.com](mailto:Bali.Virk@uk.ngrid.com)

(Participants submitting this form by email will need to send a statement to the effect that the proposer acknowledges that on acceptance of the proposal for consideration by the Amendments Panel, a proposer which is not a CUSC Party shall grant a licence in accordance with Paragraph 8.15.7 of the CUSC. A Proposer that is a CUSC Party shall be deemed to have granted this Licence).

3. Applicable CUSC Objectives\*\* - These are defined within the National Grid Electricity Transmission plc Licence under Standard Condition C10, paragraph 1. Reference should be made to this section when considering a proposed amendment.

**Attachment: Paragraph 9.5 of the UNC Modification Rules, version 3.04, dated 17 April 2009**

**9.5 Further Consultation**

- 9.5.1 If, in respect of a Modification Proposal which is the subject of a Modification Report previously submitted to the Authority by the Transporters in accordance with paragraph 9.3.4 or 10.2:
- (a) the Authority has not given notice of its decision in respect of that Modification Report within two (2) calendar months (in the case of Urgent Proposals), or four (4) calendar months (in the case of non-Urgent proposals) from the date upon which the relevant Modification Report was submitted to it; or
  - (b) the Authority, or any Voting Member, by notice to the Secretary expresses the reasonable opinion that the circumstances relating to that Modification have materially changed,
- the Secretary shall place that Modification Proposal on the Agenda for consideration at the next Modification Panel meeting.
- 9.5.2 Having considered the circumstances relating to the Modification Proposal which is subject to paragraph 9.5.1, the Modification Panel may determine that:
- (a) the Secretary should request the Authority to give an indication of the likely date by which the Authority's decision shall be made; or
  - (b) the Transporters should within five (5) days of the date of the meeting prepare and circulate a notice to each Transporter, Users and Non-Code Parties outlining the change in circumstances or reasons for delay and inviting further representations within ten (10) days of the date of the notice; or
  - (c) the Secretary should place the Modification Proposal on the Agenda for further consideration at a future meeting of the Modification Panel as determined by the Modification Panel.
- 9.5.3 If the Modification Panel makes a determination in accordance with 9.5.2(a) then the Secretary shall within five (5) Business Days formally request a response from the Authority and place the Modification Proposal on the Agenda for further consideration at the next Modification Panel meeting, it being recognised at all times that the Authority is not obliged, as a result of a request pursuant to 9.5.2(a), to provide any response or indication.
- 9.5.4 If the Modification Panel makes a determination in accordance with 9.5.2(b) the Transporters shall within five (5) Business Days of the date upon which the invitation for representations closed prepare, and submit to the Secretary a supplemental report (which need not be in the form of a Modification Report) and also procure that the Secretary submits that report and copies of any representations received to the Authority and circulates a copy to each Transporter, Users and Non-Code Parties.
- 9.5.5 Any Report submitted to the Authority under paragraph 9.5.4 shall be supplemental to the Modification Report. Supplemental reports may, but need not, express a view and recommendation which confirms those expressed in the Modification Report to which it refers.