

# Stage 05: Draft CUSC Modification Report Volume 1

Connection and Use of System Code  
(CUSC)

## CMP195 Code Governance Review post implementation clarifications

What stage is this  
document at?

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

This proposal seeks to modify the CUSC to better clarify the provisions implemented by Ofgem's Code Governance Review in 2010.

This document contains the discussions and conclusions of the Workgroup which formed in May 2011.

**Published on:** 22 September 2011



**National Grid Recommends:**

The implementation of WACM 2 as it better facilitates the Applicable CUSC Objectives



**High Impact:**

None



**Medium Impact:**

CUSC Parties



**Low Impact:**

Code Administrator, Transmission Licensee

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### Any Questions?

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## About this document

This document is the draft of the CUSC Modification Report which contains the responses to the Code Administrator Consultation. This document has been prepared and issued by National Grid under the rules and procedures specified in the CUSC. The purpose of this document is to assist the Panel in their recommendation vote whether to implement CMP195.

## Document Control

Version	Date	Author	Change Reference
0.1	08 September 2011	National Grid	Draft for industry review
0.2	22 September 2011	National Grid	Draft for Panel Vote

## 1 Summary

- 1.1 This document summarises the deliberations and conclusions of the Workgroup and describes the CMP195 Modification Proposal and the Workgroup Alternatives.
- 1.2 CMP195 was proposed by National Grid and submitted to the CUSC Modifications Panel for their consideration on 17 March 2011. The Panel determined that the proposal should be considered by a Workgroup and that they should report back to the CUSC Modifications Panel following a period for the Workgroup Consultation.
- 1.3 CMP195 proposes a number of changes to Sections 8 and 11 of the CUSC to better clarify the provisions for the following procedures implemented as part of Ofgem's Code Governance Review in 2010.
- 1.4 Additionally, there are a number of housekeeping changes which have been proposed throughout Sections 8 and 11, which seek to correct typographical errors and apply consistent formatting to the text.
- 1.5 A Workgroup Consultation was published on 10 June 2011 to which 6 responses were received. These can be found in Annex 6 of this document. A post consultation Workgroup meeting was held on 05 July 2011 to discuss the responses and also any potential alternatives, including an alternative request submitted by National Grid. The Workgroup developed three Alternatives to CMP195.

### Workgroup Conclusions

- 1.6 On 12 July 2011, the Workgroup carried out their vote on CMP195 and the associated alternatives. The majority of the Workgroup recommends that CMP195 Workgroup Alternative CUSC Modification 1 (WACM 1) should be implemented. Full details of the voting can be found in Section 7 of this Report. The alternatives can be found in Section 4 and Annex 6 of this document. A summary of the voting can be found in the table below:

Option	Better than baseline	Better than original	Best
Original	5	n/a	0
WACM 1	5	5	4
WACM 2	1	1	1
WACM 3	5	3	0
Baseline	n/a	0	0

### National Grid's View

- 1.7 National Grid supports the implementation of CMP195 WACM 2 as the changes provide more clarity over the modification procedures. The changes proposed under paragraph 8.28.3 also better reflect the implemented CAP188 WGAA, which better facilitate the Applicable CUSC Objectives.

## 2 Why Change?

- 2.1 On 5 July 2010, Ofgem published the Code Governance Review final licence modifications which placed an obligation on National Grid to implement the code modification procedures as set out in their Final Proposals which were published on 3 March 2010. CAPs 186 and 187 were implemented on 2 November 2010 and CAPs 183, 184, 185 and 188 were implemented on 30 December 2010.
- 2.2 On the 12 October 2010, Ofgem raised an extensive list of comments to the legal drafting for CAPs 183 – 188 which included comments on CAPs 186 and 187 which were already with the Authority for a decision. Whilst CAP183, 184, 185 and 188 were at the stage of Company Consultation (now referred to as the Code Administrator Consultation) these comments could not be immediately addressed as there is an established practice of not accepting changes to the legal text at the Company Consultation phase.



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### **Code Governance Review Proposals**

**CAP183** – Significant  
Code Review

**CAP184** – Self-  
governance

**CAP185** – Role of  
Code Administrator and  
Code Administration  
Code of Practice

**CAP186** – Send Back  
Process

**CAP187** –  
Environmental  
Assessment and the  
Relevant Objectives

**CAP188** – Governance  
of Charging  
Methodologies

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### 3 Solution

- 3.1 In order to address the comments from Ofgem, National Grid published an open letter to Ofgem on 9 November 2010 which stated that their comments would be reviewed by the CUSC Governance Standing Group (GSG) post implementation of the Amendment Proposals via a separate modification.
- 3.2 The GSG met on 19 January 2011 to do a page turning exercise of Sections 8 and 11 of the CUSC to identify any housekeeping changes required. However, due to the length of time required to carry out the exercise it was agreed that National Grid would provide a draft version of Sections 8 and 11 to the GSG and the original Code Governance Review Workgroup for comment, incorporating Ofgem's comments in addition to the list of house keeping changes. CMP195 was then subsequently raised as an official proposal to take into account Ofgem's comments of 12 October 2010 and their further comments of 02 March 2011.
- 3.3 CMP195 proposes a number of changes to Sections 8 and 11 of the CUSC to better clarify the provisions for the following procedures implemented as part of Ofgem's Code Governance Review in 2010. Most of the proposed changes are considered to be non material:
  - Significant Code Review
  - Self-governance
  - Governance of Charging Methodologies
  - Send back
  - Environmental Assessment
  - Code Administrator Assistance
- 3.4 In addition to the comments submitted by Ofgem, the GSG also highlighted various housekeeping changes which have been included in this proposal as these changes are also non-material in nature.

## 4 Summary of Workgroup Discussions

### Presentation of Proposal

4.1 The CMP195 Workgroup met on 5 May 2011 at the GSG to run through the Terms of Reference. The Proposer presented the proposal to the Workgroup and provided a drafting of the legal text. The Workgroup progressed through the Terms of Reference, with the specific issues set out below:

#### **Whether the legal text addresses the comments sent by Ofgem on 12<sup>th</sup> October 2010 and 2<sup>nd</sup> March 2011**

4.2 The Workgroup conducted a page turning exercise on the illustrative legal drafting provided by National Grid which had been updated from the baseline of 31 January 2011 following comments from Ofgem sent on 12 October 2010 and 2 March 2011. This also captured the housekeeping comments made by the GSG on 19 January 2011. The legal drafting can be found in Volume 2 of this Workgroup Report which captures the full changes which the Workgroup discussed. For the purposes of this consultation, only paragraphs which the Workgroup debated have been captured below. Due to the large number of comments made to Section 8, the Workgroup focused primarily on this Section and agreed for comments to be circulated via email on Section 11. A minor set of comments was received from one Workgroup Member to Section 11 on 16 May 2011 and the Authority Representative provided an update on 11 May 2011 to the queries received at the GSG.

### Section 8 – CUSC Modification

- 8.16.11 – The Workgroup debated why Ofgem had suggested removing the sentence in relation to the Code Administrator’s right to charge parties a reasonable cost to provide paper copy Charging Statements as this sentence was taken from the licence. Ofgem responded after the Workgroup meeting on 11 May 2011 and stated that it was the licensee who had the right to charge for the statements rather than the Code Administrator and therefore proposed a second paragraph to cover these rights. The legal drafting has since been updated to reflect these points and a new paragraph 8.16.12 has been inserted.
- 8.17.6 – 2 out of 5 members of the Workgroup indicated support for an additional reference to not fettering the deliberations or workings of Workgroups and Standing Groups. Ofgem has provided the wording of SLC C10(6C) to satisfy this point which has been included in the current legal drafting.
- 8.18.5 and 8.18.6 – The Workgroup discussed whether the Authority would “direct its approval is required” as opposed to directing a change without approval. Ofgem agreed that the wording could be clarified to state “unless the Authority makes a direction.”
- 8.18.5 – A Workgroup Member suggested a new definition of “Self-governance Modification Proposal” to distinguish from the Standard CUSC Modification Proposal. Ofgem provided a comment on 11 May 2011 which stated that a new definition could lead to substantive changes to the legal

text. The Proposer view is that Self-governance is a process which can be followed rather than a defined name. A “CUSC Modification Proposal” is already a defined term therefore Self-governance describes the route through which a proposal can progress.

- 8.19.3 – The Workgroup debated whether amalgamation should be included in this modification as the Proposer believed that it was out of scope due to it being more than a housekeeping change. Furthermore, the Workgroup noted that the Authority could reject an amalgamation as highlighted in the progress report. Ofgem provided further comment to this on 11 May 2011 and agreed that paragraph 8.14.3 did allow for the Authority to direct that a proposal should not be amalgamated, however they believed that it would be preferable to have a “carve out for SCR directed mods” within paragraph 8.19.3. The Proposer believes that this suggested change goes beyond CMP195 as it was never agreed in the original Code Governance Review Proposals or stated in the licence conditions.
- 8.22 to 8.24 – A Workgroup member queried whether the references to the word “recommend” should remain, taking into account CMP196 – Revisions to “recommendations” in the final CUSC modification report. Ofgem’s view was that as CMP196 had not reached the Authority for a decision, it would be best to keep this separate. The Proposer agreed that this was out of scope.
- 8.25.12 – The Proposer queried why Ofgem suggested a reference to 8.25.2 was required. Ofgem provided a response on 11 May 2011 and stated that 8.25.2 was not required and agreed with the Proposer that 8.25.9 was a circular reference to 8.25.9 which has been removed in the updated legal text.
- 8.25.14 – The Proposer noted that an update had been provided by Ofgem to include additional wording which placed a responsibility on the appellant to notify the Panel Secretary, rather than Ofgem providing the notification. This was agreed by the Workgroup.
- 8.25.17 – The Workgroup agreed that the reference should be linked to send back and the new fixed implementation dates.
- 8.25.18 (b) – The Workgroup debated whether they agreed with Ofgem that this paragraph was covered under 8.25.17. The Workgroup believed that this was an additional step which allowed the Authority to send a proposal back to the Panel for a standard vote rather than a self-governance vote. Ofgem provided an additional comment on the 11 May 2011 that this extra step was not envisaged within SLC C10 or the Final Proposals. The Proposer agrees with Ofgem’s comment as it is in line with the Self-governance procedures set out in the BSC and UNC. Therefore paragraph 8.25.18(b) has been removed as suggested.

## Whether any further housekeeping changes are required, through a page turn exercise

### Section 8 – CUSC Modification

4.3 The Workgroup agreed that a page turning exercise for Sections 8 and 11 of the CUSC could be conducted via email outside of the meeting. A number of comments were made to incorrect paragraph references which have been corrected in the latest drafting. The following points are queries from individual Workgroup Members:

- 8.1.3 – should three options be identified for the routes that a proposal could take i.e. Standard, Self-governance and Significant Code Review? Ofgem and the Proposer believe that this paragraph is already clear with respect to the routes that a proposal could take.
- 8.3.3 - Is the approval to apply to the Authority or approval for a revision to the implementation date or both? The National Grid legal view is that the approval applies to both.
- 8.3.4 – “Related Person” is not defined in Section 11. The legal view is that this definition was originally taken from the BSC and therefore will be required within Section 11. This has been included in the new drafting of Section 11.
- 8.8.9 – consider adding in “except in relation to CUSC Modification Panel meeting called to consider an Urgent CUSC Modification Proposal”. Ofgem believe that this comment was not within the scope of the proposal. The Proposer view is that the Urgency process under 8.24 already makes it clear that different timescales can be followed.
- 8.17.5 – This provision is not compliant with SLC10 which states that the Authority can direct that a mod falls within an SCR and therefore suspended. The Proposer notes that this paragraph was taken from a baseline pre 2011 incorrectly and has therefore been updated to reflect the implemented version of 31 January 2011.
- 8.16.1 – A Workgroup member queried whether the reference to 8.25.5 was correct. This has been confirmed to be correct by the National Grid legal team and the paragraph has been rearranged to provide more clarity.
- 8.20 – There were multiple incorrect references to “WG Consultation Alternative Request” which have now been corrected to “Workgroup Consultation Alternative Request.”



## Section 11 – Interpretation and Definitions

4.4 A few minor comments were received in relation to incorrect paragraph references which have been corrected in the latest drafting. In addition to these there were a few specific questions which were raised by one Workgroup member.

- Alternate Members – should this be singular or plural? The legal text has been updated to allow for both: “Alternate Member(s)”
- Legal Challenge – should this include a reference to the relevant Statutory Instrument? The legal view is that the definition does not require the reference as the CUSC is always subject to any statutory laws. Any change to the Statutory Instrument would also require a further change to the CUSC which is inefficient.
- Significant Code Review Phase – incorrect paragraph reference to 8.17.5. It should be 8.17.6
- The final definition in Section 11 should include a full stop rather than a semi colon.
- Ofgem queried whether the definition of “National Consumer Council” should include a reference to “any other successor body.” The Workgroup view was that this should only be changed if and when the National Consumer Council (NCC) becomes superseded. This was the case when Energy Watch became the NCC.

### Ofgem Additional Comments

4.5 On 25 May 2011 following a review of the draft Workgroup Consultation, Ofgem emailed to the Workgroup a further set of comments which aimed to further clarify the proposed legal text. The Code Administrator and several Workgroup Members debated these points via email which can be found in Annex 3 of this document. In order to address these comments further, the Workgroup held a teleconference on 07 June 2011 to primarily discuss two points which the Workgroup felt were more substantive than a minor edit. This involved the following:

4.6 A suggestion from Ofgem was to include a definition of “directions” to differentiate between SCR directions and any other directions issued by the Authority. A majority of the Workgroup believed that this was not necessary as it could further add complications to the legal text due to the number of different directions that the Authority could issue. Ofgem agreed that this suggestion was not critical and were comfortable with the Workgroup view that a new definition should not be added.

4.7 8.28.3 – a suggestion was put forward by Ofgem to include wording to allow the Authority to direct a different implementation date for all modification proposals including charging methodology proposals, for which the default date is 1 April of any given year. The reasoning from Ofgem was that the Authority has the power to propose a different timetable which includes implementation dates for any proposal, including charging proposals. One Workgroup member stated that the debate around the 1 April implementation date for charging proposals had been discussed at length

during the Code Governance Review Workgroup meetings; therefore, any change to this date would require a separate modification to CMP195. The Authority representative stated that the intention was not to change the default 1 April implementation date but to allow for the Authority to direct the Panel to recommend a new implementation date in exceptional circumstances.

- 4.8 A separate issue which was debated by the Workgroup was that the Authority's Significant Code Review (SCR) directions could include an implementation date. The concern from a Workgroup member was that this would be pre judging the outcome of a Modification Proposal resulting from an SCR direction. The majority of the Workgroup and Ofgem representative agreed that an implementation date from such SCR directions would be an aspiration rather than fixed, as the licensee would not have control over the implementation date after the Modification Proposal had been raised. However, one Workgroup Member did not agree to an "aspirational" implementation date within an SCR direction as they believed that this could influence or fetter the rights of a Workgroup. The Proposer's view was that the timetable for progressing Modification Proposals does not normally contain proposed implementation dates as the CUSC standard is 10 working days after the Authority direction to implement a proposal. Where there are fixed implementation dates, these are proposed by the Code Administrator through a separate process. However, the CUSC already allows for the Authority to direct the Panel to provide revised proposed implementation dates under arrangements introduced by CAP179 and the "Send Back process" (CUSC paragraphs 8.23.9, 8.23.12 and 8.23.13).
- 4.9 On 26 May 2011, the Code Administrator circulated to the Workgroup alternative wording to the legal text which specified the paragraphs which allowed the Authority to issue a direction to the Panel to propose a different implementation date. This revised wording was agreed by the majority of the Workgroup and the Ofgem representative on 07 June 2011 as they concluded that the existing provisions in the CUSC allowed for the Authority to direct the Panel to recommend a different implementation date. However, following the teleconference, a further suggestion to amend paragraph 8.28.3 was sent by the Ofgem representative, which several Workgroup members responded to.
- 4.10 In order to capture these views, four options for the legal text have been identified. The Code Administrator view is that the current CUSC provisions allow for several circumstances where a new implementation date can be directed by the Authority and has therefore referenced those relevant paragraphs. The Ofgem view is that there may be other parts of Section 8 within the CUSC in addition to the paragraphs stated by the Code Administrator which allow the Authority to direct a new implementation date. A majority of the Workgroup stated via email on 8 June 2011 that their preference would be for the Code Administrator proposed text as agreed at the teleconference rather than Ofgem's newly proposed text. However a Workgroup member view is that the 1 April implementation date for charging methodology modification proposals introduced by CAP188 should not be allowed to change and should therefore be raised as an alternative modification if this is Ofgem's intention. These views have been set out in the proposed legal text options below.

#### **Option 1 – Code Administrator proposed text**

- 4.11 A modification of the **CUSC** shall take effect from the time and date specified in the direction, or other approval, from the **Authority** referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) **Business Days** after the date of such direction, or other approval, from the **Authority** except in relation to a modification of the **CUSC** in respect of the **Charging**

**Methodologies**, which may only take effect from 1 April of any given year unless otherwise directed by the Authority in accordance with Paragraphs 8.23.9, 8.23.12 and 8.23.13 following consultation with the Panel.

#### Option 2 – Ofgem proposed text

- 4.12 A modification of the **CUSC** shall take effect from the time and date specified in the direction, or other approval, from the **Authority** referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) **Business Days** after the date of such direction, or other approval, from the **Authority** except in relation to a modification of the **CUSC** in respect of the **Charging Methodologies**, which may only take effect from 1 April of any given year unless otherwise directed by the Authority in accordance with this Section 8.

#### Option 3 – Workgroup Member proposed text 1

- 4.13 A modification of the **CUSC** shall take effect from the time and date specified in the direction, or other approval, from the **Authority** referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) **Business Days** after the date of such direction, or other approval, from the **Authority** except in relation to a modification of the **CUSC** in respect of the **Charging Methodologies**, which may only take effect from 1 April of any given year. The Authority may direct the Panel to amend the time and date that a modification of the CUSC shall take effect in accordance with Paragraphs 8.23.9, 8.23.12 and 8.23.13 following consultation with the Panel.

#### Option 4 – Workgroup Member Proposed text 2

- 4.14 A modification of the **CUSC** shall take effect from the time and date specified in the direction, or other approval, from the **Authority** referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) **Business Days** after the date of such direction, or other approval, from the **Authority** unless otherwise directed by the Authority in accordance with Paragraphs 8.23.9, 8.23.12 and 8.23.13 following consultation with the Panel. However ~~except in~~ there is an exception in relation to a modification to of the **CUSC** in respect of the **Charging Methodologies**, which may only take effect from 1 April of any given year.

#### Workgroup Initial Preferences

- 4.15 Two Workgroup members prefer Option 4 as they believe that there should be no ambiguity over whether Charging Methodologies can change on dates other than 1 April. Two Workgroup members also believe that Option 1 should be chosen in preference over Option 2, however they were silent on Options 3 and 4. The Proposer believes that Option 1 and 2 both achieve the same objective of allowing the Authority to direct a different implementation date for charging modification proposals. This was stated in the CAP188 Final Amendment report which allowed the Authority to direct a different implementation date in exceptional circumstances. The report can be found on the following link. A paragraph of particular relevance is 4.29 and also Annex 6.

- 4.16 <http://www.nationalgrid.com/NR/ronlyres/5E0F6F21-5B49-48E8-8510-F3A8254E4739/43980/CAP188FinalAmendmentReport10.pdf>

## Post Workgroup Consultation Discussions

- 4.17 A post workgroup consultation meeting was held on 05 July 2011 to discuss the 6 Workgroup Consultation responses received and also any potential alternatives, including a Workgroup Consultation Alternative Request (WCAR) submitted by National Grid. A further teleconference was held on 12 July 2011 to finalise the Workgroup Alternative CUSC Modifications.
- 4.18 Discussions centred on paragraph 8.28.3 which was concerned with changing the implementation date away from the 1 April for Charging Methodology proposals. The Workgroup noted that the intention of CAP188 Working Group Alternative Amendment (WGAA) as recorded in the Final Amendment Report was to allow the Authority to direct a different implementation date in “exceptional circumstances”. However, the Workgroup agreed that this was difficult to define and one Workgroup member was reluctant to allow such a flexible term to be used for changes to the charging implementation date. The concern by the Workgroup member was that if a change was required, then it would be important to define the reasons for the change. The Ofgem representative stated that there may be situations where the Panel may want to change the date away from the 1 April but the current wording in the legal text did not allow for any change to occur even if the Panel and the Authority believed that the date should be different. In any case the Authority would always state the reason for why a different implementation date would be required. The Ofgem representative noted that the WCAR sought to rectify an omission in the legal text implemented for CAP188 WGAA.
- 4.19 A majority of the Workgroup believed that the provisions inserted by CAP179 under paragraph 8.23.9 already allowed for the Authority to direct a change to an implementation date in exceptional circumstances. The Ofgem representative believed that the intention of this paragraph only prevented proposals from timing out which would allow the Authority to direct a new implementation date rather than allowing the change in any other circumstance. However the majority Workgroup view was that the wording stated that the date could be changed by the Authority if they felt that it “may no longer be appropriate”. Whilst the intention of CAP179 was focused on timing out of proposals, the Workgroup view was that current wording in the CUSC suggested that it could also cover charging implementation dates.

## Workgroup Conclusions on Consultation Options

- 4.20 The Workgroup discussed the four options proposed in the Workgroup consultation and took the industry responses into account. 2 Workgroup members preferred Option 1 out of the 4 options. 3 Workgroup members did not prefer any of the options proposed and instead opted for no change to paragraph 8.28.3. The reason for this was that the 3 Workgroup members believed that changing the implementation date was an important issue which was out of scope of CMP195 and believed that it deserved greater discussion under a new modification as there may be merit in the Authority directing a new implementation date. 2 Workgroup members believed that Option 1 was the best as long as paragraph 8.23.9 allowed the Authority to change the implementation date under exceptional circumstances. The majority of the Workgroup did not support Option 4 but one Workgroup member believed that Option 4 should be raised under a new modification rather than under CMP195 original or an alternative.
- 4.21 On the 05 July 2011, the Workgroup discussed the Workgroup Consultation Alternative Request (WCAR) which was raised by the Proposer. The details can be found in Annex 6 under Industry Responses. The proposer explained that the alternative was identical to the original CMP195 proposal but it included an additional clause which allowed the Authority to direct a

new implementation date for charging proposals but only under exceptional circumstances, in line with CAP188 WGAA approved by the Authority on 30 December 2010.

- 4.22 The Workgroup discussed the proposed legal text within the WCAR and the majority view was that this could be covered in the existing fixed implementation date provisions under paragraph 8.23.9. However, one Workgroup member was concerned that the draft legal text for the WCAR allowed the Authority to direct a change to the implementation date without first allowing the Panel to consult the Industry. This meant that the Panel would not be able to provide the Authority with an official recommendation and so potentially reduce the Industry's rights to appeal the implementation date. The majority of the Workgroup believed that allowing the Panel to consult the industry in the event of an implementation date change would provide greater safeguard to the Industry and also protect the Authority against potential appeals and Judicial Reviews.
- 4.23 The Workgroup also discussed at which point the Authority could direct a change to the implementation date. The Ofgem representative stated that this would be directed during the approval of a modification. The Ofgem representative stated that in the case of CAP173, the Authority upon receiving the Final Amendment Report noted that the proposed implementation date within the Amendment Report would not be feasible. Therefore in discussions with National Grid prior to approving the Amendment, the Authority included in their decision letter a new implementation date which was different from the proposed date in the report.

#### **CMP195 Original**

- 4.24 The Workgroup unanimously agreed that CMP195 Original should not contain any of the options proposed under the Workgroup consultation and therefore any changes should be raised under either an alternative or a new modification.

#### **Workgroup Alternative CUSC Modifications (WACM)**

- 4.25 On 12 July 2011 the Workgroup agreed CMP195 original and 3 Workgroup Alternative CUSC Modifications were developed. These have been set out below:

##### **WACM 1**

- 4.26 Based on their discussions and the Workgroup Consultation responses, a majority of the Workgroup agreed that a WACM should be proposed based upon CMP195 Original but including the legal text from Option 1. However WACM 1 was altered by the Workgroup on 12 July 2011 as it was developed further which provided further clarification to paragraph 8.23.9 to make it explicit that the Authority could change the implementation date in exceptional circumstances in addition to the timing out provisions. However, this would require the Authority to allow the Panel to conduct an industry consultation. The reason for this was that paragraph 8.23.9 could be interpreted to cover only "timing out" of modifications as specified in CAP179 rather than other scenarios which required a change to the implementation date. This view was shared by the National Grid legal representative. Therefore WACM 1 contained the change from the Original, plus option 1 identified in the consultation plus additional clarifications to paragraph 8.23.9. The Workgroup also noted that the Authority was not bound by the

recommendation of the Panel after an industry consultation had taken place with regard to changing the implementation date. The change to WACM 1 was agreed by the majority of the Workgroup.

## **WACM 2**

- 4.27 The proposer believed that the WCAR was still valid as following the legal view from National Grid, the proposer believed that paragraph 8.23.9 only covered issues arising from proposals “timing out” as introduced by CAP179. This view was contrary to what the majority of the Workgroup believed as the view was that 8.23.9 could be interpreted to cover timing out and also changes to an implementation date under exceptional circumstances. The proposer believed that due to the ambiguity of paragraph 8.23.9 it would be better to clarify “exceptional circumstances” in a separate paragraph. In addition to this, the proposer did not believe that the Authority should allow the Panel to conduct a further industry consultation as consulting the Panel would be adequate. Furthermore as the majority of the Workgroup believed that the Authority could direct a different implementation date contrary to a Panel recommendation, it would be inefficient to consult both the Panel and the industry as the Authority would have clear reasons for why the implementation date should be changed from 1 April.
- 4.28 A minority of the Workgroup supported WACM2. This contained the WCAR from National Grid, which included the changes within the CMP195 Original. The only difference is that it allows the Authority to direct the licensee to implement a CMP with a different implementation date in exceptional circumstances, following consultation with the Panel. This would not require the Panel to recommend an implementation date to the Authority or allow for a further industry consultation. As only one Workgroup member supported WACM 2, the Chairman used her powers under the CUSC to allow the alternative to remain as a possible option for the Panel to consider. The reason was that the chairman believed that it better facilitated the Applicable CUSC Objectives than the baseline and due to the discussions surrounding implementation dates, considered that it should be an alternative in addition to WACM 1.

## **WACM 3**

- 4.29 This was proposed by one Workgroup member who proposed that this would include the changes from WACM 2 but require the Authority to allow the Panel to conduct an Industry consultation and follow the process outlined in paragraph 8.23.9.1. The majority of the Workgroup believed that an industry consultation was required as it would give the Authority clear reasons for a recommended implementation date and therefore create a more transparent process. The benefit of this alternative compared to WACM 1 is that it separates out the timing out provisions in paragraph 8.23.9 and makes it clear that there is a separate provision for exceptional circumstances. However as with WACM 1, the Authority would not be bound by the recommendation from the Panel after such consultation has taken place. One difference with WACM 2 is that WACM 3 would direct the Panel to recommend a new date but WACM 2 would not require the Panel to propose a new date. The Workgroup unanimously supported the progression of WACM 3.

## 5 Impacts

### Impact on the CUSC

- 5.1 CMP195 requires amendments to the following parts of the CUSC:
- Section 8
  - Section 11
- 5.2 The text required to give effect to the original proposal is contained in Volume 2 of this Workgroup Consultation.

### Impact on Greenhouse Gas Emissions

- 5.3 Neither the Proposer nor the Workgroup identified any material impact on Greenhouse Gas emissions.

### Impact on Core Industry Documents

- 5.4 Neither the Proposer nor the Workgroup identified any impacts on Core Industry Documents.

### Impact on other Industry Documents

- 5.5 Neither the Proposer nor the Workgroup identified any impacts on other Industry Documents.

## 6 Proposed Implementation

- 6.1 The Workgroup propose that CMP195 should be implemented 10 Working Days after an Authority Decision.

## 7 Recommendations

### Workgroup Conclusions

- 7.1 On 12 July 2011 the Workgroup voted on CMP195 Original and the 3 WACMs. The Workgroup voted with a 4 – 1 majority that CMP195 WACM 1 should be implemented. The details of the votes can be found in the table on the next page.
- 7.2 For reference the CUSC Objectives are:
- (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and
  - (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.

### National Grid's View

- 7.3 As proposer, National Grid supports the implementation of CMP195 WACM 2 as the changes provide more clarity over the modification procedures. The changes proposed under paragraph 8.28.3 also better reflect the implemented CAP188 WGAA, which better facilitate the Applicable CUSC Objectives.



## Vote 1

### 7.4 Does CMP195 Original better facilitate the Applicable CUSC objectives compared with the baseline?

Objective	(a)	(b)
Garth Graham	Yes. Better meets obligations set out in the Code Governance Review and transmission licence changes	Yes. Better certainty for market participants
Stuart Cotten	Yes. It promotes efficient operation of the CUSC	Neutral
Steven Eyre	Yes. As stated by Garth Graham	Neutral
Esther Sutton	Yes. As stated by Garth Graham	Yes
Steve Lam	Yes. It promotes efficient operation of the CUSC	Yes. Provides greater clarity and certainty to market participants

### 7.5 Does CMP195 WACM 1 better facilitate the Applicable CUSC objectives compared with the baseline?

Objective	(a)	(b)
Garth Graham	Yes. Better meets obligations set out in the Code Governance Review and transmission licence changes. WACM 1 is also an improvement over the original	Yes. Better certainty for market participants
Stuart Cotten	Yes. As stated by Garth Graham. WACM 1 also provides greater clarity on the modification procedures	Neutral
Steven Eyre	Yes. As stated by Garth Graham	Neutral
Esther Sutton	Yes. As stated by Garth Graham	Yes. As stated by Garth Graham
Steve Lam	Yes. Even taking into account the change proposed in paragraph 8.28.3, it is better than the baseline	Yes. It provides greater clarity to market participants

**7.6 Does CMP195 WACM 2 better facilitate the Applicable CUSC objectives compared with the baseline?**

<b>Objective</b>	<b>(a)</b>	<b>(b)</b>
Garth Graham	Yes. But the concerns under Applicable CUSC Objective (b) outweigh benefits under (a)	No. There is a detriment to market participants as it does not cater for an industry consultation within paragraph 8.28.3. This increases uncertainty and risk which affects competition.
Stuart Cotten	Yes. It is marginal under (a) as it brings all the changes as proposed under CMP195 original. But changes under 8.28.3 detrimental.	No. The change under paragraph 8.28.3 is detrimental to competition.
Steven Eyre	No. It is not an efficient process if there is no industry consultation under paragraph 8.28.3.	No. It negatively affects competition
Esther Sutton	No. It is not following best practice and so is not efficient.	No. Worse under (b)
Steve Lam	Yes. It is more efficient as the changes provide more clarity over the modification procedures. The changes proposed under paragraph 8.28.3 also better reflect the implemented CAP188 WGAA.	Yes. Provides clarification for the modification procedures which would help market participants

**7.7 Does CMP195 WACM 3 better facilitate the Applicable CUSC objectives compared with the baseline?**

<b>Objective</b>	<b>(a)</b>	<b>(b)</b>
Garth Graham	Yes. But the concerns under Applicable CUSC Objective (b) outweigh benefits under (a) However it does provide for a more efficient process.	Yes. With regard to an industry consultation being allowed under 8.28.3, it gives greater certainty to market participants and is therefore better for competition
Stuart Cotten	Yes, it brings the efficiencies of CMP195 Original plus it adds more in terms of clarifications to sections 8 and 11 of the CUSC	Neutral, as it does no more than WACM 1
Steven Eyre	Yes. It is more efficient to consult industry in relation to paragraph 8.28.3, as they will be the most impacted by the modification	Yes. As stated by Garth Graham

Esther Sutton	Yes. It provides clarity to the CUSC and so it is more efficient.	Yes. As stated by Garth Graham
Steve Lam	Yes. It provides clarity to the modification procedures but may not fully reflect the intention of CAP188. Overall it does better facilitate the objectives under (a)	Yes. It is marginally better under (b) as it provides certainty to industry

## Vote 2

### 7.8 Does CMP195 WACM 1 better facilitate the Applicable CUSC objectives compared with CMP195 Original?

Objective	(a)	(b)
Garth Graham	Yes. It resolves the ambiguity under CMP195 Original as it allows the Authority to direct a change to a charging implementation date which would follow a specific process in the CUSC	Yes. It resolves the ambiguity as per the reasons set out for (a)
Stuart Cotten	Yes as per Steven Eyre. It resolves the issue under CAP188 and paragraph 8.28.3	Neutral
Steven Eyre	Yes. It provides additional clarity over CMP195 Original	Neutral
Esther Sutton	Yes. It makes paragraph 8.28.3 clearer	Yes
Steve Lam	Yes. Marginal under (a) but it doesn't fully address the issue under CAP188	Neutral

### 7.9 Does CMP195 WACM 2 better facilitate the Applicable CUSC objectives compared with CMP195 Original?

Objective	(a)	(b)
Garth Graham	Yes. It is better than CMP195 Original as set out under WACM 1. However, there is a disbenefit overall	No because there is a lack of certainty for the industry. The original doesn't allow the date to change which is better overall.

Stuart Cotten	Neutral as per the reasons set out by Steven Eyre– This only contains the benefits introduced under CMP195 Original but it also introduces a clause which may affect competition	No as there is no robust industry consultation process
Steven Eyre	Neutral – do not believe that an additional clause is required for exceptional circumstances and it is not required for the issue raised by CAP188	No – due to impacts on competition and the lack of consultation with industry
Esther Sutton	Yes. As stated by Garth Graham	No. As stated by Garth Graham
Steve Lam	Yes – It better meets the licence conditions particularly under SLC C10 (6) (c)	Yes – It provides clarity on the process for changing implementation dates

**7.10 Does CMP195 WACM 3 better facilitate the Applicable CUSC objectives compared with CMP195 Original?**

<b>Objective</b>	<b>(a)</b>	<b>(b)</b>
Garth Graham	Yes. It better meets the obligations set out in the Code Governance Review and transmission licence changes.	Yes. It gives market participants certainty over implementation dates and also allows them to be changed
Stuart Cotten	Neutral	Neutral
Steven Eyre	Neutral - do not believe that an additional clause is required for exceptional circumstances and it is not required for the issue raised by CAP188	Neutral
Esther Sutton	Yes – more efficient than original	Yes as it includes a consultation procedure for changing the charging implementation date
Steve Lam	Yes – marginally more efficient	Neutral. Not sure it adds any more to WACM 1 but it does allow for a change to the implementation date.

## Vote 3

### 7.11 Which option best facilitates the Applicable CUSC Objectives?

Member	BEST option	Reason
Garth Graham	WACM1	Best achieves the objectives out of the 5 options
Stuart Cotten	WACM1	Includes the changes under CMP195 Original but removes the ambiguity over implementation dates under 8.28.3
Esther Sutton	WACM1	WACM 1 is best out of all the options
Steven Eyre	WACM1	Provides greater clarity than CMP195 Original and is better than the baseline. Do not support WACM 2 or WACM 3.
Steve Lam	WACM2	Better resolves the defect introduced by CAP188, better reflects licence conditions, more efficient overall compared to other options.

7.12 3 Workgroup Members expressed a preference on all of the options as shown in the table below:

Member	Preference 1	Preference 2	Preference 3	Preference 4
Esther Sutton	WACM1	WACM 3	Original	Baseline
Stuart Cotten	WACM1	Original		
Steven Eyre	WACM1	Original	Baseline	

### Workgroup Consultation Responses

8.1 The following table provides an overview of the representations received.

No.	Respondent	Support?	Better facilitates Applicable CUSC Objectives?	Preference over proposed options for paragraph 8.28.3	SCR comments
1	Drax Power	Partial	Marginal benefit under (a) for majority of CMP195; but changes to 8.28.3 would be detrimental to efficiency by causing greater regulatory uncertainty	<ul style="list-style-type: none"> <li>8.28.3 <b>should not change</b> (no support for any option)</li> <li>Implementation dates for Charging Methodology should be dealt with under a separate mod – not within scope of CMP195</li> <li>Authority should use existing powers to make changes to dates, not add new text to CUSC</li> </ul>	n/a
2	E.ON UK	Partial	Yes on (a) and (b) to minor changes, but No if it includes any change to 8.23.8	<ul style="list-style-type: none"> <li>Implementation dates for Charging Methodology should be dealt with under a separate mod, not within scope of CMP195;</li> <li><b>Option 4 is only one acceptable;</b></li> <li>Option 3 = unacceptable as it is unclear with relation to the charging methodologies;</li> <li>Option 1 = unacceptable as there's no reassurance that 1 April will always be the target;</li> <li>Option 2 = least acceptable, opens implementation date for charging methodologies and requires reading Section 8</li> </ul>	n/a

No.	Respondent	Support?	Better facilitates Applicable CUSC Objectives?	Preference over proposed options for paragraph 8.28.3	SCR comments
				to understand	
3	EDF Energy	Yes	Yes on (a) as it provides greater clarity; Neutral on (b)	<ul style="list-style-type: none"> <li>• <b>Support options 1, 2 and 3</b> as they clarify Ofgem's existing rights;</li> <li>• Option 4 appears to remove existing rights and is outside scope of CMP195</li> </ul>	Do not support Ofgem's view that an SCR direction could realistically include an implementation date. EDF does not support any move to alter existing mods process which derives the implementation date;
4	NGET	Yes	Yes on (a) as it provides greater clarity = more efficient mod procedures; Yes (b) marginal benefit of improving small participants' understanding	<ul style="list-style-type: none"> <li>• Options 1 and 2 partially address Ofgem's issue;</li> <li>• <b>Raised WCAR to reflect original intention of CAP188 WGAA;</b></li> <li>• WCAR legal text is based on Option 1;</li> <li>• Propose additional "exceptional circumstances" clause.</li> </ul>	n/a
5	ScottishPower	Yes	Yes on (a) & (b) – greater clarity to all parties and betters efficiency and competition	<ul style="list-style-type: none"> <li>• <b>Support Option 4.</b> Key principle of CAP188 was that charging methodology changes follow fixed implementation timetable; only option 4 preserves this.</li> </ul>	n/a
6	SSE	Yes	Yes on (a) as per paras 7.3 and 7.4 Neutral on (b)	<ul style="list-style-type: none"> <li>• <b>Support Option 1</b> as the powers in 8.23.9 allows the Panel to re consult with stakeholders</li> <li>• Support the Code Administrator's proposed text</li> </ul>	Would like Ofgem's position on SCRs to be subject to a more robust examination

No.	Respondent	Support?	Better facilitates Applicable CUSC Objectives?	Preference over proposed options for paragraph 8.28.3	SCR comments
				due to their significant role in the original CGR changes	

## Code Administrator Consultation Responses

8.2 The following table provides a summary of the responses received for the CMP195 Code Administrator Consultation which closed on 23 August 2011. The full responses can be found in

No.	Respondent	Support for CMP195 Original or WACMs?	Further Comments
1	Drax Power	Support WACM1 overall as it allows for an industry consultation if the charging implementation date is changed.	<ul style="list-style-type: none"> <li>Majority of housekeeping changes provide a benefit under objective (a)</li> <li>Amendment to 8.28.3 may have a negative commercial impact if the Authority can direct a mid year implementation date</li> <li>May be merit in changing the implementation date but difficult to define "exceptional circumstances"</li> </ul>
2	EDF Energy	Supportive of WACM1 overall as it provides greater clarity for when the charging implementation date can change. However, not supportive of WACM2 as it introduces a clause which is not required	None
3	Scottish Power	Yes – betters efficiency and competition	None
4	E.ON UK	Support CMP195 Original only as the changes suggested to 8.23.8 could have a negative impact on parties and therefore detrimental to competition	<ul style="list-style-type: none"> <li>Ability to change the charging implementation date may be desirable</li> <li>8.23.9 was introduced for CAP179 which may not cover charging implementation dates</li> <li>May be merit in clarifying the wording for 8.23.9 to make it specific to CAP179</li> <li>Cannot recall a clear view from the CAP188 Workgroup whether they meant for a date change to be allowed</li> </ul>



### TERMS OF REFERENCE FOR CMP195 WORKGROUP

#### RESPONSIBILITIES

1. The Workgroup is responsible for assisting the CUSC Modifications Panel in the evaluation of CUSC Modification Proposal CMP195, Code Governance Review post implementation clarifications, tabled by National Grid at the CUSC Modifications Panel meeting on 25<sup>th</sup> March 2011.
2. The proposal must be evaluated to consider whether it better facilitates achievement of the Applicable CUSC Objectives. These can be summarised as follows:
  - (a) the efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence; and
  - (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.
3. It should be noted that additional provisions apply where it is proposed to modify the CUSC Modification provisions, and generally reference should be made to the Transmission Licence for the full definition of the term.

#### SCOPE OF WORK

4. The Workgroup must consider the issues raised by the Modification Proposal and consider if the proposal identified better facilitates achievement of the Applicable CUSC Objectives.
5. In addition to the overriding requirement of paragraph 4, the Workgroup shall consider and report on the following specific issues:
  - a) Whether the legal text addresses the comments sent by Ofgem on 12<sup>th</sup> October 2010 and 2<sup>nd</sup> March 2011
  - b) Whether any further housekeeping changes are required, through a page turn exercise
6. The Workgroup is responsible for the formulation and evaluation of any Workgroup Alternative CUSC Modifications (WACMs) arising from Group discussions which would, as compared with the Modification Proposal or the current version of the CUSC, better facilitate achieving the Applicable CUSC Objectives in relation to the issue or defect identified.
7. The Workgroup should become conversant with the definition of Workgroup Alternative CUSC Modification which appears in Section 11 (Interpretation and Definitions) of the CUSC. The definition entitles the Group and/or an individual member of the Workgroup to put forward a

WACM if the member(s) genuinely believes the WACM would better facilitate the achievement of the Applicable CUSC Objectives, as compared with the Modification Proposal or the current version of the CUSC. The extent of the support for the Modification Proposal or any WACM arising from the Workgroup's discussions should be clearly described in the final Workgroup Report to the CUSC Modifications Panel.

8. Workgroup members should be mindful of efficiency and propose the fewest number of WACMs possible.
9. All proposed WACMs should include the Proposer(s)'s details within the final Workgroup report, for the avoidance of doubt this includes WACMs which are proposed by the entire Workgroup or subset of members.
10. There is an obligation on the Workgroup to undertake a period of Consultation in accordance with CUSC 8.20. The Workgroup Consultation period shall be for a period of three weeks (15 working days) as determined by the Modifications Panel.
11. Following the consultation period the Workgroup is required to consider all responses including any WG Consultation Alternative Requests. In undertaking an assessment of any WG Consultation Alternative Request, the Workgroup should consider whether it better facilitates the Applicable CUSC Objectives than the current version of the CUSC.

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

12. The Workgroup is to submit its final report to the Modifications Panel Secretary on 21<sup>st</sup> July 2011 for circulation to Panel Members. The final report conclusions will be presented to the CUSC Modifications Panel meeting on 29<sup>th</sup> July 2011.

## MEMBERSHIP

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

<b>Role</b>	<b>Name</b>	<b>Representing</b>
Chairman	Alex Thomason	n/a
National Grid Representative*	Steven Lam	National Grid
Industry Representatives*	Garth Graham	Scottish and Southern Energy
	Peter Bolitho	E.ON UK
	Stuart Cotten	Drax Power

	Steven Eyre	EDF Energy
Authority Representative	Abid Sheikh	Ofgem
Technical Secretary	Bali Virk	Code Administrator

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

14. The chairman of the Workgroup and the Modifications Panel Chairman must agree a number that will be quorum for each Workgroup meeting. The agreed figure for CMP195 is that at least 5 Workgroup members must participate in a meeting for quorum to be met.
15. A vote is to take place by all eligible Workgroup members on the Modification Proposal and each WACM. The vote shall be decided by simple majority of those present at the meeting at which the vote takes place (whether in person or by teleconference). The Workgroup chairman shall not have a vote, casting or otherwise. There may be up to three rounds of voting, as follows:
  - Vote 1: whether each proposal better facilitates the Applicable CUSC Objectives;
  - Vote 2: where one or more WACMs exist, whether each WACM better facilitates the Applicable CUSC Objectives than the original Modification Proposal;
  - Vote 3: which option is considered to BEST facilitate achievement of the Applicable CUSC Objectives. For the avoidance of doubt, this vote should include the existing CUSC baseline as an option.

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

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

19. The Workgroup membership can be amended from time to time by the CUSC Modifications Panel.

#### RELATIONSHIP WITH MODIFICATIONS PANEL

20. The Workgroup shall seek the views of the CUSC Modifications Panel before taking on any significant amount of work. In this event the Workgroup chairman should contact the Modifications Panel Secretary.
21. The Workgroup shall seek the CUSC Modifications Panel's advice if a significant issue is raised during the Consultation process which would require a second period of Consultation in accordance with 8.20.17 of the CUSC.
22. Where the Workgroup requires instruction, clarification or guidance from the Modifications Panel, particularly in relation to their Scope of Work, the Workgroup chairman should contact the Panel Secretary.

#### MEETINGS

23. The Workgroup shall, unless determined otherwise by the CUSC Modifications Panel, develop and adopt its own internal working procedures and provide a copy to the Panel Secretary for each of its CUSC Modification Proposals.

##### 8.2.1

##### 8.2.2 REPORTING

24. The Workgroup chairman shall prepare a final report to the July 2011 CUSC Modifications Panel responding to the matters set out in the Terms of Reference, including all Workgroup Consultation Responses and Alternative Requests.
25. A draft Workgroup Report must be circulated to Workgroup members with not less than five Business Days given for comments, unless all Workgroup members agree to three Business Days.
26. Any unresolved comments within the Workgroup must be reflected in the final Workgroup Report.
27. The chairman (or another member nominated by him) will present the Workgroup report to the CUSC Modifications Panel as required.

## Appendix 1: Indicative Workgroup Timeline

The following timetable is suggested for progressing the CMP195 Workgroup.

25th March 2011	Panel to agree progression
5th May 2011	First workgroup meeting
16th May 2011	Issue draft Workgroup consultation
23rd May 2011	Deadline for comment on consultation
10th June 2011	Publish Workgroup Consultation
1st July 2011	Deadline for response to consultation
12th July 2011	Post consultation Work group meeting
13th July 2011*	Issue draft Workgroup Report
20th July 2011*	Deadline for comment on draft report
21st July 2011*	Submit Workgroup Report to Panel Secretary
29th July 2011*	Present Workgroup report to CUSC Modifications Panel

### Notes:

1. A three working week period has been proposed for the Workgroup Consultation, in line with the Code Administration Code of Practice recommendation. The dates above take into account the bank holidays during the consultation period.
2. If more than one Workgroup meeting is required after the Workgroup Consultation closes (for example, for consideration of any WG Consultation Alternative requests), the dates marked with an asterisk (\*) above are likely to change. This may also impact on being able to present the Workgroup Report to the July 2011 Panel meeting.

<b>CUSC Modification Proposal Form</b>	<b>CMP195</b>
Title of the CUSC Modification Proposal: <i>(mandatory by Proposer)</i> <b>Code Governance Review post implementation clarifications</b>	
Submission Date <i>(mandatory by Proposer)</i> 17 March 2011	
Description of the CUSC Modification Proposal <i>(mandatory by Proposer)</i>  CMP195 proposes a number of changes to Sections 8 and 11 of the CUSC to better clarify the provisions for the following procedures implemented as part of Ofgem's Code Governance Review in 2010. The proposed changes are considered to be non material: <ul style="list-style-type: none"> <li>• Significant Code Review</li> <li>• Self-governance</li> <li>• Governance of Charging Methodologies</li> <li>• Send back</li> <li>• Environmental Assessment</li> <li>• Code Administrator Assistance</li> </ul> Additionally, there are a number of housekeeping changes which have been proposed throughout Sections 8 and 11, which seek to correct typographical errors and apply consistent formatting to the text.	
Description of Issue or Defect that CUSC Modification Proposal seeks to Address: <i>(mandatory by Proposer)</i>  On 5 <sup>th</sup> July 2010, Ofgem published the Code Governance Review final licence modifications which placed an obligation on National Grid to implement the code modification procedures as set out in their Final Proposals which were published on 31 <sup>st</sup> March 2010. CAPs 186 and 187 were implemented on 2 <sup>nd</sup> November 2010 and CAPs 183, 184, 185 and 188 were implemented on 30 <sup>th</sup> December 2010.  On the 12 <sup>th</sup> October 2010, Ofgem raised an extensive list of comments to the legal drafting for CAPs 183 – 188 which included comments on CAPs 186 and 187 which were already with the Authority for a decision. Whilst CAP183, 184, 185 and 188 were at the stage of Company Consultation (now referred to as the Code Administrator Consultation) these comments could not be immediately addressed as there is an established practice of not accepting changes to the legal text at the Company Consultation phase.  In order to address these concerns National Grid published an open letter to Ofgem on 9 <sup>th</sup> November 2010 which stated that their comments would be reviewed by the CUSC Governance Standing Group	

(GSG) post implementation of the Amendment Proposals via a separate modification.

In addition to the comments submitted by Ofgem, the GSG also highlighted various housekeeping changes which have been included in this proposal as these changes are also non-material in nature.

Since the implementation of the Code Governance Review, the GSG and Ofgem have separately reviewed the proposed legal text for Sections 8 and 11, with Ofgem providing further clarification to their comments of 12<sup>th</sup> October.

For reference, a consolidated version of Ofgem's comments is attached as an Appendix to this proposal.

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

Sections 8 and 11 of the CUSC will require amending

**Do you believe the CUSC Modification Proposal will have a material impact on Greenhouse Gas Emissions? Yes/No** *(assessed in accordance with Authority Guidance – see guidance notes for website link)*

No

**Impact on Core Industry Documentation. Please tick the relevant boxes and provide any supporting information** *(this should be given where possible)*

BSC

Grid Code

STC

Other

*(please specify)*

**Urgency Recommended: Yes / No** *(optional by Proposer)*

No

**Justification for Urgency Recommendation** (mandatory by Proposer if recommending progression as an Urgent Modification Proposal)

N/A

**Self-Governance Recommended: Yes / No** (mandatory by Proposer)

Yes

**Justification for Self-Governance Recommendation** (Mandatory by Proposer if recommending progression as Self-governance Modification Proposal)

As the proposal provides further clarification to existing procedures and definitions within Section 8 and does not introduce any material changes, this should be considered for the Self-governance route.

**Should this CUSC Modification Proposal be considered exempt from any ongoing Significant Code Reviews?** (Mandatory by Proposer in order to assist the Panel in deciding whether a Modification Proposal should undergo a SCR Suitability Assessment)

There are no SCRs which are currently ongoing which affect the CUSC.

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

None

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

None

Justification for CUSC Modification Proposal with Reference to Applicable CUSC Objectives: (mandatory by proposer)

Please tick the relevant boxes and provide justification:

(a) the efficient discharge by The Company of the obligations imposed upon it by the Act and the Transmission Licence

This proposal will provide more clarity to Sections 8 and 11 of the CUSC which will allow a more efficient operation of modification procedures as stated by Paragraph 6 of licence Condition C10.

(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.

This proposal can also help smaller industry participants to better understand the governance and modification procedures which would enhance their opportunities in raising changes to the CUSC and so facilitate effective competition within the industry.



These are defined within the National Grid Electricity Transmission plc Licence under Standard Condition C10, paragraph 1

<b>Details of Proposer:</b> (Organisation Name)	National Grid Electricity Transmission plc
Capacity in which the CUSC Modification Proposal is being proposed: (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:	Steven Lam National Grid Electricity Transmission plc 01926 653534 Steven.lam@uk.ngrid.com
<b>Details of Representative's Alternate:</b> Name: Organisation: Telephone Number: Email Address:	Alex Thomason National Grid Electricity Transmission plc 01926 656379 <a href="mailto:Alex.thomason@uk.ngrid.com">Alex.thomason@uk.ngrid.com</a>
<b>Attachments (Yes/No):</b> <b>If Yes, Title and No. of pages of each Attachment:</b>	
Appendix 1: Ofgem review of Consolidated CUSC legal text of 27 September 2010 Response of 2 March 2011 (15 Pages)	

**Ofgem Review of Consolidated CUSC Legal Text of 27 September  
2010  
Response of 2 March 2011**

**SCRs**

<b>Reference to CUSC Legal Text</b>	<b>Concern</b>	<b>Ofgem comment (02/03/2011)</b>
8.17.1	<p>We consider that it is misleading/inaccurate to say "for inclusion within the Significant Code Review" as such proposals in practice are not included within the Significant Code Review. The current drafting implies that they are, or may be. Furthermore, SLC C10 refers to proposals falling <u>within scope of</u> a Significant Code Review.</p> <p><a href="#">Agree</a></p> <p><u>Suggestion:</u> We consider that all such references throughout the legal texts for section 8 and 11 should be replaced with references to falling/fall within scope of a Significant Code Review as appropriate, including definition of "Standard CUSC Modification Proposal".</p> <p><a href="#">Agree</a></p> <p>In similar vein, paragraph 8.1.6 contains reference to "subsumed into a Significant Code Review" which may also be misleading/inaccurate. We consider a reference to "restricted during a Significant Code Review" is more appropriate.</p> <p><a href="#">Agree</a></p>	Thank you.
8.17.1	<p>(1) We consider that in the Panel's assessment of whether a CUSC Modification Proposal falls within scope of an SCR must also include an assessment of the applicability of the exceptions set out in SLC C10(6A)(a) and (b) - as required by SLC C10(6B)(b)(ii).</p> <p><a href="#">Agree</a></p> <p>(2) Linked to the above point, where a modification proposal falls</p>	<p>(1) Thank you.</p> <p>(2) We consider that the words "or unless sub-paragraph 8.17.4(b) applies" should be inserted after the words "unless exempted</p>

	<p>within a current SCR but is a proposal that is raised pursuant to an SCR direction, that modification, under SLC C10(6A)(b), may be made. However the drafting currently effectively provides that where SCR proposal is made during another SCR phase the panel must proceed with it (as it is a CUSC modification proposal) but also must send suitability assessment which they are not required to do under the licence as that modification may be made under SLC C10(6A)(b).</p> <p><a href="#">Agree</a></p> <p>Further, the meaning of "Standard CUSC Modification Proposal" may cause some ambiguity. It means CUSC proposals except those suitable for inclusion within SCRs or Self Governance. For the avoidance of doubt, we consider it is best to make clear that except those suitable for inclusion within SCRs "as directed by the Authority under Paragraph 18.7.5".</p> <p><a href="#">Agree</a></p>	<p>by the Authority" so that an SCR directed proposal will always proceed through the standard procedures without suitability assessment. In the definition of "Standard CUSC Modification Proposal", we consider the reference to paragraph 18.7.5 should be 18.7.3.</p>
8.17.3	<p>We query how you consider SLC C10(6A) has been implemented – where the Authority may determine that a CUSC Modification Proposal falling within scope of an SCR may be made if it falls within the exceptions listed i.e. urgency.</p> <p><a href="#">Agree</a></p>	Thank you.
8.17.3	<p>We consider that the first sentence of this paragraph should be amended which states that if at any time the Authority directs that a proposal submitted during an SCR falls within scope of an SCR, the Panel then cannot proceed with that proposal. However, the Authority may direct that it does fall within the SCR but that the proposal may be made due to, amongst other things, urgency (see SLC C10(6A)). Therefore, we suggest the provision is tweaked to ensure there is no ambiguity surrounding whether the Panel is</p>	Thank you.

	<p>bound not to proceed with that proposal under this paragraph as currently drafted.</p> <p><u>Suggestion:</u></p> <p>“If the Authority at any time directs that the CUSC Modification Proposal submitted during a Significant Code Review Phase <del>is suitable for inclusion</del> falls within <b>scope of</b> the Significant Code Review <b>and must not be made during the Significant Code Review Phase</b>, the CUSC Modifications Panel will not proceed with that CUSC Modification Proposal, and the Proposer shall decide whether the CUSC Modification Proposal shall be withdrawn or suspended until the end of the Significant Code Review Phase.”</p> <p>Agree</p>	
<p>8.17.5 Now become 8.17.6</p>	<p>We consider that this paragraph should make clear that “<b>where The Company makes a CUSC Modification Proposal in accordance with Authority directions, that proposal proceeds through the process for Standard CUSC Modification Proposals set out in Paragraphs 8.18 to 8.23</b>” as this is stated for ‘Self-Governance’ proposals that turn out not to fall within Self-Governance and therefore follow the standard process.</p> <p>Agree</p>	<p>(1) We query why the reference to paragraph 8.18 has been omitted.</p> <p>(2) We consider that the beginning of the provision should be clarified as follows:</p> <p>“<del>If w</del>Within twenty-eight (28) days after the <b>Authority</b> has published its <b>Significant Code Review</b> conclusions, the <b>Authority may</b> issues to <b>The Company</b> directions, including directions to <b>The Company</b> to make <b>CUSC Modification Proposal(s),...</b>”</p>
<p>8.19.3</p>	<p>We query the impact of amalgamation on an SCR CUSC Modification Proposal since once an</p>	<p>We consider that it should be included in this proposal or</p>

	<p>SCR modification proposal is raised it follows the Standard CUSC Modification Proposal process. We consider SCR proposals should not fall within scope of amalgamation – this mirrors that currently proposed in the BSC legal text – and we consider a provision to this effect should be inserted here.</p> <p>Will not be included as this was not in the original proposal or in the licence and so it will have to be raised as a new CUSC modification</p>	<p>a new proposal raised in respect of it.</p>
8.20.22	<p>We consider that the last sentence; “the CUSC Modification Proposal and any Workgroup Alternative CUSC Modification shall be suspended during the Significant Code Review Phase, unless withdrawn”, should refer back to the provisions on suspension and withdrawal and the proposer’s right to specify within 28 days whether that proposal is withdrawn or suspended. Therefore, we consider it would better read as follows: “the CUSC Modification Proposal and any Workgroup Alternative CUSC Modification shall be suspended <b>or withdrawn</b> during the Significant Code Review Phase,<del>unless withdrawn</del> <b>in accordance with Paragraph 8.17.3.”</b></p> <p>Agree</p>	<p>Thank you.</p>
8.1.4	<p>We consider that the words “high level” should be deleted as appears inaccurate.</p> <p>Agree</p>	<p>Thank you.</p>

### **Self Governance**

<b>Reference to CUSC Legal Text</b>	<b>Concern</b>	<b>Ofgem comment (02/03/2011)</b>
8.18.4	<p>We consider that the last part of this paragraph may be interpreted wrongly; “The CUSC Modifications Panel shall follow the procedure set out in Paragraph 8.25 in respect of any CUSC Modification Proposal deemed by the CUSC Modifications Panel to fall within the Self-Governance Criteria”. It may be</p>	<p>We consider that paragraph 8.18.5 requires additional wording at the end</p> <p>“..unless the Authority directs its approval is required in accordance with</p>

	<p>interpreted that where a proposal is not deemed by the Panel to fall within self-governance then paragraph 8.25 does not apply - whereas it should apply. Therefore we suggest the following may work better.</p> <p><u>Suggestion:</u></p> <p>"The CUSC Modifications Panel shall evaluate each CUSC Modification Proposal against the Self-Governance Criteria.<del>The CUSC Modifications Panel and</del> shall follow the procedure set out in Paragraph 8.25 <del>in respect of any CUSC Modification Proposal deemed by the CUSC Modifications Panel to fall within the Self-Governance Criteria.</del>"</p> <p>The paragraph has been split to include some of the suggested wording and to deal with modifications that are deemed not to be Self-governance. However, the Panel would not always follow the procedure set put in paragraph 8.25 as this deals with modifications that progress as Self-governance.</p>	<p>paragraph 8.25.2 and in such a case that CUSC Modification Proposal shall be a Standard CUSC Modification Proposal and shall follow the procedure set out in paragraphs 8.19, 8.20. 8.22 and 8.23."</p>
8.18.5	<p>We consider that this paragraph is not required as covered in 8.25. It slightly confuses matters/duplicates in that paragraph 8.25 applies and sets out essentially the same thing as this paragraph does.</p> <p>This is still required as this gives the provisions for the Authority to direct a modification to be progressed as Self-governance. The legal text has included the words "[unless the Authority determines otherwise in accordance with paragraph 8.25.4"...]</p>	Thank you.
8.25.2	<p>We query why the reference to the process for Standard CUSC Modification Proposals set out in various paragraphs excludes paragraph 8.21 – could this be</p>	Thank you.

	<p>relevant in relation to proposals to amend the charging methodologies?</p> <p>8.21 deals with Standing Groups which are separate to the modifications process, which is why this reference was omitted.</p> <p>No change required</p>	
8.25.4	<p>This refers to the Authority giving a direction at the first CUSC Modifications Panel meeting at which a CUSC Modification Proposal is discussed at the earliest. We query why we are limited to giving a direction no earlier than in that meeting and we consider this should be deleted.</p> <p>Agree – paragraph edited to state that the Authority may issue a direction and removed reference to the first Panel meeting.</p>	Thank you.
8.25.9	<p>We consider a reference to “in accordance with paragraph 8.25.4” is required after the words “or if the Authority determines that the Self-Governance Criteria are satisfied”.</p> <p>Agree</p>	Thank you.
8.25.11	<p>(1) We consider the reference to ‘Self-Governance Report’ should be a reference to the defined term ‘CUSC Modification Self-Governance Report’.</p> <p>Agree</p> <p>(2) We consider the words “and a direction has not been issued under Paragraph 8.25.4” should be inserted after the words “If a Self-Governance Statement is retracted,” for clarification.</p> <p>Agree</p> <p>(3) We consider that the words: “, and the Authority shall make a determination in respect of the CUSC Modification Proposal in accordance with Paragraph 8.23.7.” should be deleted because other relevant provisions appear to be excluded, for example, the Authority may send back the modification report, due to the</p>	Thank you.

	<p>words "the Authority shall".  <a href="#">Agree</a>  <u>Suggestion:</u> Therefore, we suggest that the paragraph is clarified as follows-</p> <p>"If a Self-Governance Statement is retracted <del>and a direction has not been issued under Paragraph 8.25.4,</del> or if the Authority notifies the CUSC Modifications Panel that it has determined that a CUSC Modification Proposal does not meet the Self-Governance Criteria the CUSC Modifications Panel shall treat the CUSC Modification Proposal as a Standard CUSC Modification Proposal and shall comply with Paragraph 8.23, using the <del>CUSC Modification</del> Self-Governance Report as a basis for its CUSC Modification Report.<del>, and the Authority shall make a determination in respect of the CUSC Modification Proposal in accordance with Paragraph 8.23.7."</del></p> <p><a href="#">Agree</a></p>	
8.25.12	<p>We do not understand why the Panel would, after the Authority either does not give notice that its decision is required or determines that a proposal fulfils the Self-Governance Criteria (paragraph 8.25.9), withdraw that proposal from the Self Governance process and direct it to the standard process for Authority decision. Furthermore, how does this work if (1) the Authority has already determined that the Self Governance Criteria are met and the proposal should follow Self Governance under 8.25.4, and (2) if the Authority could just issue a direction that the proposal should follow Self Governance under 8.25.4 in any case? Due to these implications, we consider this provision should be deleted.</p> <p><b>We agreed that this provision</b></p>	<p>We note the references to paragraph 8.25.9 and 8.25.4. We consider that the references should be to paragraph 8.25.4 and paragraph 8.25.2. Further, we consider that this paragraph should be clarified to reflect that the panel may direct the proposal to the standard process if it considers it falls outside the Self Governance criteria.</p>



	<b>does not apply where the Authority determines that a proposal fulfils the Self-Governance Criteria under paragraph 8.25.9 and therefore should be amended to state this.</b> <a href="#">Agree</a>	
8.25.10	Note that currently the reference to 8.25.19 should be 8.25.18. If you agree with our comment above on Self Governance Appeals where we suggest a new paragraph 8.25.19 then this reference does not require amendment. <a href="#">Agree</a>	Thank you.

### **Self Governance Appeals**

<b>Reference to CUSC Legal Text</b>	<b>Concern</b>	<b>Ofgem comment (02/03/2011)</b>
8.25.14	<p>(1) We consider that the appeal should be made up to and including 15 business days following Panel determination in accordance with paragraph 8.25.9 and not from publication of the decision to approve or reject. Please see SLC C10 (13B) which sets out that an appeal may be made 15 working days after the approval or rejection and so not from publication of the decision to approve or reject. <a href="#">Agree</a></p> <p>(2) We consider that reference to "...the approval or rejection by the CUSC Modifications Panel of a CUSC Modification Proposal and any Workgroup Alternative CUSC Modification that met the Self-Governance Criteria..." should be reference to "...the approval or rejection by the CUSC Modifications Panel of a CUSC Modification Proposal and any Workgroup Alternative CUSC Modification <del>that met the Self-Governance Criteria in accordance with Paragraph 8.25.9...</del>". This is because the reference just to "that</p>	<p>Thank you. We note that the provision states that a party may appeal if the criteria are satisfied and provided that the panel secretary is notified of any appeal. We consider this latter requirement to notify the panel secretary should be separated out because SLC C10 provides that the appeal only has to be lodged with the Authority within 15 days and satisfies the criteria. So if notification is not given to the panel secretary the appeal can still go ahead but on the current drafting it appears that it cannot due to the words "provided that".</p>

	<p>met the Self-Governance Criteria” does not appear to be enough as there is a full process set out in paragraph 8.25 which culminates in the Panel decision under paragraph 8.25.9 which is then appealable.</p> <p>Agree</p>	
8.25.15	<p>(1) We consider that the words “the merits of the appeal against” should be deleted and the words “whether the appeal satisfies”. This is to make clear this is a ‘permission stage’ type provision avoid any implication or confusion that we are deciding the appeal at that stage. Further, the word “Whether” at the beginning of (a), (b), (c) and (d) should be deleted.</p> <p>Agree</p> <p>(2) We note that the Authority may consider that the appeal criteria are not fulfilled so dismiss the appeal. We consider that a provision is required to cover this eventuality at the end of this paragraph.</p> <p>Agree</p>	Thank you.
8.25.17	<p>(1) We consider that reference to “...Panel’s determination in respect of a CUSC Modification Proposal or Workgroup Alternative CUSC Modification that met the Self-Governance Criteria” should be reference to “...Panel’s determination in respect of a CUSC Modification Proposal or Workgroup Alternative CUSC Modification <del>that met the Self-Governance Criteria in accordance with Paragraph 8.25.9...</del>”. This is because the reference just to “that met the Self-Governance Criteria” does not appear to be enough as there is a full process set out in paragraph 8.25 which culminates in the Panel decision under paragraph 8.25.9 which is then appealable.</p> <p>Agree</p>	<p>(1) Thank you.</p> <p>(2) We consider that the reference should be to “paragraphs 8.23.9 to 8.23.13” as send back is covered under 8.23.12 and the new fixed implementation dates provisions have been inserted in paragraph 8.23.9.</p>

	<p>(2) We consider that for the avoidance of doubt an express reference to paragraph 8.23.9 (send back) should be included: e.g.</p> <p>“.....the CUSC Modification Panel’s determination of that CUSC Modification Proposal and any alternative shall be treated as a CUSC Modification Report submitted to the Authority pursuant to Paragraph 8.23.6 (for the avoidance of doubt, subject to Paragraph 8.29.3) and the CUSC Modification Panel’s determination shall be treated as its recommendation pursuant to Paragraph 8.23.4.”</p> <p>Agree but the reference should be to 8.23.9.</p>	
8.25.18	<p>(1) We consider the words “If the Authority quashes the CUSC Modifications Panel’s determination in respect of a CUSC Modification Proposal or Workgroup Alternative CUSC Modification made in accordance with Paragraph 8.25.9,” should be inserted at the beginning of this paragraph for relevant context.</p> <p>Agree</p> <p>(2) We consider the reference to “further consideration” should be “re-consideration”.</p> <p>Agree</p> <p>(3) We also consider that the sentence “and it is also open to the Authority to direct the CUSC Modifications Panel to refer its recommendation to the Authority for final determination pursuant to Paragraph 8.23.7.” should be deleted. If the Authority quashes the Panel’s determination and remits it back for reconsideration, the panel would then be taking the decision again and not the Authority, further paragraph 8.25.17 covers situations where</p>	<p>Thank you. However we consider 8.25.18(b) is not required as this is a step covered by 8.25.17.</p>

	<p>the Authority may quash the panel’s decision and take the decision itself in any case.</p> <p><u>Suggestion:</u> We suggest that the paragraph is clarified as follows-</p> <p>“If the Authority quashes the CUSC Modifications Panel’s determination in respect of a CUSC Modification Proposal or Workgroup Alternative CUSC Modification made in accordance with Paragraph 8.25.9, <del>the Authority may, following an appeal to the Authority, refer the CUSC Modification Proposal back to the CUSC Modifications Panel for further re-consideration and a further CUSC Modifications Panel Self-Governance Vote and it is also open to the Authority to direct the CUSC Modifications Panel to refer its recommendation to the Authority for final determination pursuant to Paragraph 8.23.7.”</del></p> <p>Agree with the suggested text but the draft also includes the two send back routes:</p> <ol style="list-style-type: none"> <li>1. Panel votes and makes determination</li> <li>2. Panel votes and makes recommendation to the Authority</li> </ol>	
New 8.25.19	<p>We note that the Authority may confirm the CUSC Modifications Panel’s determination. We consider a new paragraph should be inserted to this effect to cover off this aspect.</p> <p><u>Suggestion:</u> We suggest the following provision could be inserted-</p> <p>“The Authority may confirm the CUSC Modifications Panel’s determination in respect of a CUSC Modification Proposal or Workgroup Alternative CUSC Modification made in accordance with Paragraph 8.25.9, following an appeal to the Authority.”</p>	Thank you.

8.28.1	<p><a href="#">Agree</a></p> <p>We consider that reference to appeals and paragraph reference to Panel decision on self-governance proposals is required in this paragraph.</p> <p><u>Suggestion:</u> For example, we consider that the provision could be clarified as follows-</p> <p>“The CUSC shall be modified either in accordance with the terms of the direction by the Authority relating to, or other approval by the Authority of, the CUSC Modification Proposal or any Workgroup Alternative CUSC Modification contained in the relevant CUSC Modification Report, or in respect of CUSC Modification Proposals <b>or any Workgroup Alternative CUSC Modification that are subject to Panel determination under Paragraph 8.25.9</b>, in accordance with the relevant CUSC Modification Self-Governance Report <b>subject to the appeal procedures set out in paragraphs 8.25.14 to 8.25.[19].”</b></p> <p><a href="#">Agree</a></p>	Thank you.
8.23.3 <a href="#">Incorrect ref 8.28.3</a>	<p>(1) We consider that (a) part of this provision, about the self governance modification taking effect, should be subject to appeals process</p> <p><a href="#">Agree</a></p> <p>and (b) reference to the Paragraph 8.28.2 (Panel decision on self-governance proposals) are required for clarification in this paragraph.</p> <p><a href="#">Disagree with reference which is about notification to parties. Suggested change: replace [...that meets the Self-governance criteria..] with “pursuant to paragraph 8.25.10.” This references those modifications which have been voted on via self-governance. This comment is captured in the suggested text</a></p>	Thank you.

[below](#)

(2) We are concerned about the last part of the provision “which shall, taking into account the fifteen (15) Business Day period set out in Paragraph 8.25.14 to allow for appeals, shall be no less than sixteen (16) Business Days after the date on which the notice is published pursuant to Paragraph 8.28.2”. It appears that the date in the notice cannot be any earlier than 16 business days which means there is scope for the implementation date to be as short as immediately after the next 16 days. However, we consider that an appeal and decision may not be complete within 16 days i.e. an appeal could come to us on the 15<sup>th</sup> day. Further this notice requirement seems to conflict with paragraph 8.25.14 which states implementation is suspended pending the appeal outcome. Therefore, where an appeal is raised and therefore implementation suspended, why is the notice required to be no earlier than 16 business days to allow for appeals? Alternatively should there be a requirement on the Code Administrator, in respect of self governance proposals, to only give its notice under paragraph 8.28.2 after the 15 day timeframe for an appeal is complete, and where an appeal is raised within that timeframe, upon the Authority’s decision?

Suggestion: For example, we consider that the provision could be clarified as follows-

“A modification of the CUSC shall take effect from the time and date specified in the direction, or other approval, from the Authority referred to in Paragraph 8.28.1 or,

in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) Business Days after the date of such direction, or other approval, from the Authority except in relation to a modification of the CUSC in respect of the Charging Methodologies, which may only take effect from 1 April of any given year.

A modification of the CUSC ~~that meets the Self-Governance Criteria, which does not require approval from the Authority, pursuant to 8.25.10~~ shall take effect, ~~subject to the appeal procedures set out in Paragraphs 8.25.14 to 8.25.[19],~~ from the time and date specified by the Code Administrator in its notice given pursuant to Paragraph 8.28.2, which shall ~~be given after the expiry of the fifteen (15) Business Day period set out in Paragraph 8.25.14 to allow for appeals, or where an appeal is raised in accordance with Paragraph 8.25.14, on conclusion of the appeal in accordance with Paragraphs 8.25.15 or 8.25.[19] but where conclusion of the appeal is earlier than the fifteen (15) Business Day period set out in Paragraph 8.25.14, notice shall be given after the expiry of this period taking into account the fifteen (15) Business Day period set out in Paragraph 8.25.14 to allow for appeals, shall be no less than sixteen (16) Business Days after the date on which the notice is published pursuant to Paragraph 8.28.2.~~"

Agree

You will note the references to paragraph 8.25.15 and 8.25.19. These refer to where the where appeal is not permitted by the Authority (8.25.14) or where the appeal is permitted but the panel

	<p>decision is upheld (8.25.19) (both paragraphs as suggested to be amended in line with our other comments in this note).</p> <p>Further, we note that in paragraph 8.22.4(b), the Code Administrator may propose implementation date. This may have some interrelation with our comments here. It may be that the relevant part of paragraph 8.22.4(b) is made subject to Paragraph 8.23.3. <a href="#">Reference should be to 8.28.3.</a> <a href="#">However, disagree with this comment as 8.28.3 deals with the notification of an implementation date whereas 8.22.4 deals with proposed (indicative) implementation dates within the consultation paper which would not be binding.</a></p>	
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**Send-back**

<b>Reference to CUSC Legal Text</b>	<b>Concern</b>	<b>Ofgem comment (02/03/2011)</b>
8.23.10	<p>After a modification report is resubmitted to the Authority following send back, the last sentence of this provision requires that the Authority will then approve or reject the proposal or send back again. We consider that this last sentence is not required and should be deleted. The references to Paragraph 8.23.4 to Paragraph 8.23.6 make clear that the report is sent to the Authority for decision and send back applies. <a href="#">Agree</a></p>	Thank you.
8.23.7	<p>We consider this paragraph should start with the words "<a href="#">Subject to Paragraph 8.23.9,</a>" so that Authority decision is subject to send back provisions. <a href="#">Agree</a></p>	<p>We consider that the reference should be to "paragraphs 8.23.9 to 8.23.13" as send back is covered under 8.23.12 and the new fixed implementation</p>



		dates provisions have been inserted in paragraph 8.23.9.
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In addition, Abid Sheik made the following comments in September which we agreed with but were unable to act on due to the delay in the response:

8.23.9 – the Authority cannot properly form an opinion on the proposed amendment or any alternatives when directing send back (the content of the Amendment Report will relate to not just the proposed but also any alternative amendments). The CAP186 text only refers to the proposed amendment. This should be changed to “cannot properly form an opinion on the Proposed Amendment **and any alternative amendment**”? The same point would need to be reflected throughout the drafting of 8.23.9 and 8.23.10 where there’s reference to Proposed Amendment. [Agree. Thank you.](#)

8.23.9 (a) – the licence (C10 7aa) talks of “specifying additional steps (including drafting or amending existing drafting...)”. This isn’t properly reflected here because of the addition of ‘legal’ before ‘drafting’ in the first line. The licence suggests ‘drafting’ is used as a verb rather than as a noun in the CAP186 text. [Agree. Thank you.](#)

#### **Environmental Assessment**

<b>Reference to CUSC Legal Text</b>	<b>Concern</b>	<b>Ofgem comment (02/03/2011)</b>
8.16.4(h)	We query whether the wording of this provision, for the proposer’s assessment, should match SLC C10(6)(b)(ivb) and that provided in 8.23.2(d) for Panel assessment. <a href="#">Agree (minor - swap round wording)</a>	Thank you.
8.23.2(d)	We consider a reference to “Workgroup Alternative CUSC Modification(s)” is required after the references to the ‘CUSC Modification Proposal’. <a href="#">Agree – references will be made to “Modification(s)” throughout Section 8 where applicable</a>	Thank you.

#### **Code Administrator Assistance**

<b>Reference to CUSC Legal Text</b>	<b>Concern</b>	<b>Ofgem comment (02/03/2011)</b>
8.16.11(d)	We consider that the last sentence “subject to any charge made by The Company to cover its reasonable costs of providing such information”	This provision seems to combine SLC C10(6)(ac)(iv) and

	<p>should be narrowed down to cover only Charging Statements consistent with the licence.  <a href="#">Agree – comment updated by Ofgem from previous version following comments from NG</a></p>	<p>C10(6)(ad)(iii).  The former provision does not only apply to modifications proposals that have been implemented and the latter is an obligation on the Licensee and we consider that it would be clearer to amend as follows.</p> <p>(d) Accessing information relating to the <b>Charging Statements</b> <del>(subject to any charge made by The Company to cover its reasonable costs of providing the Charging Statements)</del>, and any amendment, revision or notice of proposed amendment to the <b>Charging Statements, CUSC Modification Proposals</b> and/or <b>CUSC Modifications Proposals</b> that have been implemented</p> <p><u>Suggested new paragraph:</u></p> <p>8.16.12</p> <p>The Company may provide information in accordance with paragraphs 9 and 10 of standard condition C4 (Charges for use of system) and paragraphs 13 and 14 of standard condition C6 (Connection</p>
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		<p>charging methodology); and</p> <p>insofar as reasonably practicable, the provision by The Company of such other information or assistance as a materially affected party may reasonably request for the purposes of preparing a proposal to modify a charging methodology.</p> <p>You may consider this new paragraph would more appropriately go into paragraph 8.26.</p>
8.16.11	<p>We consider that “Materially Affected Parties” should be inserted where reference is made to “(including, in particular, Small Participants and consumer representatives)” to comply with SLC C10(6)(ad)(iii), albeit limited to for the purposes of preparing a proposal to modify a charging methodology if desired.</p> <p><a href="#">Agree (minor change)</a></p>	Thank you.

### **Charging Methodologies**

<b>Reference to CUSC Legal Text</b>	<b>Concern</b>	<b>Ofgem comment (02/03/2011)</b>
SLC C10(6)(b)(iva)	<p>Grateful if you could clarify how SLC C10(6)(b)(iva) has been implemented in the legal text.</p> <p><a href="#">Incorporated under paragraph 8.16.2</a></p>	Thank you.

### **Definitions**

<b>Reference to CUSC Legal Text</b>	<b>Concern</b>	<b>Ofgem comment (02/03/2011)</b>
Definition of “CUSC	We consider this definition could be clarified more accurately as	Thank you.

<p>Modifications Panel Self-Governance Vote”</p>	<p>follows, reflecting how the Panel assess a self governance modification proposal (as set out in SLC C10 13A(d)). This provides certainty of how a self governance proposal will be assessed.</p> <p><u>Suggestion:</u> For example-</p> <p>“The vote of Panel Members undertaken by the Panel Chairman in accordance with Paragraph.8.25.9 as to whether they believe each CUSC Modification Proposal, <del>or Workgroup Alternative CUSC Modification would</del> as compared with the then existing provisions of the CUSC and any Workgroup Alternative CUSC Modification set out in the CUSC Modification Self-Governance Report, better facilitate achievement of the Applicable CUSC Objective(s)”</p> <p>Agree</p>	
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**Charging Methodologies - Transitional Arrangements**

Reference to CUSC Legal Text	Concern	Ofgem comment (02/03/2011)
<p>8.23.11</p>	<p>We consider that the transitional arrangements provision requires tweaking so that it fully permits the Company to make a transitional modification to the Charging Methodologies contained within the CUSC. We consider it currently just prevents the Company from making a transitional charging modification if Authority veto’s that proposed modification but in fact does not actually permit the Company to make the transitional modification if the Authority does not veto it.</p> <p><u>Suggestion:</u></p> <p>1. Amend 8.23.11 as follows:</p> <p>“Unless the Authority directs otherwise, the Company may make any modification to the Charging</p>	<p>Thank you.</p>

	<p>Methodologies if a report has been furnished to the Authority <b>in respect of that modification</b>, in accordance with standard condition C5 or standard condition C6 of the Transmission Licence in force as at 30 December 2010, before 31 December 2010 and within twenty eight (28) days of that report being furnished to the Authority, the Authority has either <b>not</b>:</p> <p>(a) directed The Company that the modification shall not be made; or</p> <p>(b) notified The Company that it intends to undertake an impact assessment and, <b>if it has notified The Company that it intends to undertake an impact assessment</b>, within three months of giving that notification, <b>it has not</b> directed The Company not to make the modification.”</p> <p>and</p> <p>2. Amend 8.28.1 to include the words “or in accordance with paragraph 8.23.11” so that the CUSC can be modified to reflect any transitional charging modifications.</p> <p><b>Deleted paragraph as it is post transition now.</b></p>	
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Additional discrepancies/errors – 02/03/2011

- 8.1.4.(c) – refers to paragraph 8.1.7 which does not exist.
- 8.17.7 – we consider that the reference to paragraph 8.17.5 be a reference to 8.17.6.
- 8.23.13 – we consider that reference to paragraph 8.23.9 should be reference to 8.23.12 (send back)? Or possibly both if consider the fixed implementation dates provisions (8.23.9) are also relevant.
- You may want to consider definition of ‘National Consumer Council’ to include reference to “any other successor body”.

### OFGEM COMMENTS ON CMP195 LEGAL TEXT

25 May 2011

Thank you very much for including our latest comments and suggested edits in the latest legal text. We value your cooperation in better clarifying the drafting. We set out below a small number of minor drafting errors and suggested edits to aid clarity/consistency of the provisions and provided some explanation for the suggested edits as required.

#### SECTION 8

##### Paragraph 8.16.12

We provide a couple of suggested edits for clarity and to use the relevant defined terms.

8.16.12 **The Company** may provide information in accordance with paragraphs 9 and 10 of standard condition C4 (Charges for use of system) and paragraphs 13 and 14 of standard condition C6 (Connection charging methodology) of the **Transmission Licence**; and insofar as reasonably practicable, the provision by **The Company** of such other information or assistance as a **Materially Affected Party** may reasonably request for the purposes of preparing a proposal to modify the **Charging Methodologies**.

##### Paragraph 8.17.3

We suggest the first part of this paragraph is amended as follows. The word “submitted” on the second line should be “made” to be clear and in accordance with 8.17.1 which states “If any party...makes a CUSC Modification Proposal” (please also reflect in 8.17.2). The other edits are for clarity and consistency with other provisions.

8.17.3 Subject to Paragraph 8.17.4, the **Authority** may at any time direct that a **CUSC Modification Proposal** made during a **Significant Code Review Phase** falls within the scope of a **Significant Code Review** and must not be made during the **Significant Code Review Phase**. If so directed, the **CUSC Modifications Panel** will not proceed with that **CUSC Modification Proposal**, and the **Proposer** shall decide whether the **CUSC Modification Proposal** shall be withdrawn or suspended until the end of the **Significant Code Review Phase**.

##### Paragraph 8.17.5

We consider the following caveat is necessary as if under paragraph 8.17.4 the Authority directs that although the proposals falls within scope of Significant Code Review but it should continue through the standard CUSC process or if it is an Significant Code Review directed proposal which continues through the standard CUSC process anyway, then there probably is no need for the Panel to consult under paragraph 8.17.5. Further, it appears that a proposal is “made” not “submitted” and a proposal may fall “within scope of a SCR” as opposed to be “suitable for inclusion” in a SCR.

8.17.5 Where a direction under Paragraph 8.17.3 has not been issued, paragraph 8.17.4 does not apply and the **CUSC Modifications Panel** considers that a **CUSC Modification Proposal** made during a **Significant Code Review Phase** may fall within the scope of a **Significant Code Review**, the **CUSC Modifications Panel** may consult on its suitability as part of the **Standard CUSC Modification Proposal** route set out in Paragraphs 8.19, 8.20, 8.22 and 8.23.

##### Paragraph 8.20.22

We consider that this paragraph should be made subject to paragraph 8.17.4 as you may not want the Workgroup to have to consult where a proposal does fall within a Significant Code Review but the Authority has directed under paragraph 8.17.4 it should continue through the standard CUSC process or if it is a Significant Code Review directed proposal which continues through the standard CUSC process anyway under paragraph 8.17.4. Further, if the Panel consider a proposal falls within the Significant Code Review it should consult with the Authority as opposed to “may” consult.

##### Paragraph 8.25.14

8.25.14 A **CUSC Party**, or the **National Consumer Council** or any **BSC Party** may appeal to the **Authority** the approval or rejection by the **CUSC Modifications Panel** of a **CUSC Modification Proposal** and any **Workgroup Alternative CUSC Modification(s)** in accordance with Paragraph 8.25.9, provided that the **Panel Secretary** is also notified, and the appeal has been made up to and including fifteen (15) **Business Days** after the **CUSC Modifications Panel Self-Governance Vote** has been undertaken pursuant to Paragraph 8.25.9. If such an appeal is made, implementation of the **CUSC Modification Proposal** shall be suspended pending the outcome. The appealing **CUSC Party**, **National Consumer Council** or **BSC Party** must notify the **Panel Secretary** of the appeal when the appeal is made.

**Comment [Jess1]:** This does not include a Materially Affected Party who could appeal a determination of the Panel on a Charging Methodologies self-governance modification. We consider that this should be included.

**Comment [Jess2]:** We consider that these words should be deleted in line with our previous comment that the appeal is not subject to notification and as the final sentence of this paragraph deals with the requirement to notify the Panel of an appeal.

#### **Paragraph 8.25.17**

8.25.17 If the **Authority** quashes the **CUSC Modifications Panel's** determination in respect of a **CUSC Modification Proposal** or **Workgroup Alternative CUSC Modification (s)** made in accordance with Paragraph 8.25.9 and takes the decision on the relevant **CUSC Modification Proposal** and any **Workgroup Alternative CUSC Modification(s)** itself, following an appeal to the **Authority**, the **CUSC Modifications Panel's** determination of that **CUSC Modification Proposal** and any **Workgroup Alternative CUSC Modification(s)** contained in the relevant **CUSC Modification Self-Governance Report** shall be treated as a **CUSC Modification Report** submitted to the **Authority** pursuant to Paragraph 8.23.6 (for the avoidance of doubt, subject to Paragraphs 8.23.9 to 8.23.13) and the **CUSC Modifications Panel's** determination shall be treated as its recommendation pursuant to Paragraph 8.23.4.

#### **Paragraph 8.25.18**

8.25.18 If the **Authority** quashes the **CUSC Modifications Panel's** determination in respect of a **CUSC Modification Proposal** or **Workgroup Alternative CUSC Modification(s)** made in accordance with paragraph 8.25.9, the **Authority** may, following an appeal to the **Authority**, either:

(a) refer the **CUSC Modification Proposal** back to the **CUSC Modifications Panel** for re-consideration and a further **CUSC Modifications Panel Self-Governance Vote**; or

**Comment [Jess3]:** We suggest deleting this for clarity.

**Comment [Jess4]:** We suggest deleting this for clarity.

#### **Paragraph 8.28.3**

We note that the Authority may issue SCR directions to the licensee under SLC C10(6C)(a). Those directions, as defined in paragraph SLC C10(15), include the timetable to comply with the SCR directions; including implementation of the modification, if approved. This could impact the provision relating to implementation of charging modification proposals under paragraph 8.28.3. However, under the licence, C10(6C)(a), the licensee must comply with the Authority's SCR directions. Further, the Authority may require revised implementation dates and also may send back a modification report on the basis it is deficient and require new implementation dates. Again this would also impact the provision relating to implementation of charging modification proposals under paragraph 8.28.3. Therefore, we consider that the first part of this paragraph should be amended to resolve this conflict for licence compliance purposes as follows.

8.28.3 A modification of the **CUSC** shall take effect from the time and date specified in the direction, or other approval, from the **Authority** referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) **Business Days** after the date of such direction, or other approval, from the **Authority** except in relation to a modification of the **CUSC** in respect of the **Charging Methodologies**, which may only take effect from 1 April of any given year unless otherwise directed by the Authority.

## **SECTION 11**

### **Definition of "Standard CUSC Modification Proposal"**

The reference to paragraph 18.7.3 should be a reference to paragraph 8.17.3. Further, we think the definition should be amended as follows as it currently appears to refer to a direction of the Authority which directs that a proposal does not fall within scope of a Significant Code Review which is not the case. The Authority would direct that it does fall

within the scope of a Significant Code Review so should not continue (paragraph 8.17.3), or that it does fall within scope of a Significant Code Review but should continue (paragraph 8.17.4). Further, in terms of self-governance, the Panel may consider that a proposal does not meet the self-governance criteria but the Authority may direct that it does under paragraph 8.25.4 or where the Panel considers it does not meet the criteria the Authority may direct that it does under paragraph 8.25.2.

“A **CUSC Modification Proposal** that does not fall within the scope of a **Significant Code Review** subject to any direction by the **Authority** pursuant to Paragraph 8.17.3 and Paragraph 8.17.4, nor meets the **Self-Governance Criteria** subject to any direction by the Authority pursuant to Paragraph 8.25.4 and in accordance with any direction under Paragraph 8.25.2.”

#### Definition of “Directions”

We consider that a definition of “Directions” as set out in SLC C10 of the Transmission Licence would be helpful to insert in Section 11 so as to define the term “directions” used in paragraphs 8.17.6, 8.17.8 and 8.17.9 and used in the definition of “Significant Code Review Phase”. This would also help differentiate clearly between any ‘Directions’ issued by the Authority pursuant to a SCR and the ‘directions’ referred to in the definition of “Transmission Business”. This is a simple change to make, not substantive, for increased clarity in the use of terms and the definition of “Directions” would simply replicate that in SLC C10 as appropriate.



## Annex 4 - Workgroup Attendance Register

Name	Organisation	Role	05/05/11 Attended?	07/06/11 Attended?	05/07/11 Attended?	12/07/11 Attended?
Alex Thomason	National Grid	Chairman	Yes	Yes	Yes	Yes
Bali Virk	National Grid	Technical Secretary	Yes	Yes	Yes	Yes
Steven Lam	National Grid	National Grid representative	Yes	Yes	Yes	Yes
Emma Clark	National Grid	Observer	Yes	No	No	No
Abid Sheikh	Ofgem	Authority Representative	Yes (T-Con)	Yes (T-Con)	Yes (T-Con)	Yes (T-Con)
Garth Graham	SSE	Workgroup Member	Yes	Yes (T-Con)	Yes	Yes (T-Con)
Stuart Cotten	Drax Power	Workgroup Member	Yes	Yes (T-Con)	Yes (T-Con)	Yes (T-Con)
Peter Bolitho	E.ON UK	Workgroup Member	Yes	No	No	No
Esther Sutton (Peter's Alternate)	E.ON UK (Alternate)	Workgroup Member	No	Yes (T-Con)	Yes	Yes (T-Con)
Steven Eyre	EDF Energy	Workgroup Member	Yes	Yes (T-Con)	Yes (T-Con)	Yes (T-Con)

## Annex 5 – Workgroup Email Correspondence

All,

I spoke to Steve Lam earlier today and thought it would be helpful, in capturing the WG discussions from yesterday in the WG consultation, if the consultation document reflects both the NG draft text for 8.28.3 and the Ofgem version of the draft text as submitted in last night's email with a consultation question seeking respondent views on these draft texts. If not already captured, either Jessica or I can provide some explanation around our proposed version of 8.28.3.

As Stuart has also now put forward yet another version of 8.28.3, it may be helpful to provide this version of the text in the consultation also while still asking the same consultation question on views on these various versions as suggested above.

Would this be an acceptable way forward for the WG?

Regards

Abid

### **Abid Sheikh**

Manager Industry Codes  
Licensing and Industry Codes  
107 West Regent Street  
Glasgow  
G2 2BA  
Tel: 0141 331 6011  
[www.ofgem.gov.uk](http://www.ofgem.gov.uk)

**From:** .Box.Cusc.Team [mailto:cusc.team@uk.ngrid.com]

**Sent:** 08 June 2011 16:36

**To:** garth.graham@sse.com; Stuart Cotten; Abid Sheikh; Quinn, Angela - UK Legal; Eyre, Steven; Sutton, Esther; Peter Bolitho; Virk, Bali; Lam, Steven

**Cc:** Jessica Hodges; Jonathan Dixon; .Box.Cusc.Team

**Subject:** RE: CMP195: Finalisation of Workgroup Consultation - COMMENTS PLEASE

Dear CMP195 Workgroup Members

Thank you for your further thoughts on this element of the legal text. It is proving rather tricky to pin down! Looking at the timetable, we can afford one further day's grace, so I suggest we give everyone time to digest the emails sent today by Stuart and Garth and reconvene tomorrow by email to try and finalise the text.

We will seek further legal advice within National Grid based on the latest correspondence and come back to you tomorrow.

Kind regards,  
Alex  
**Alex Thomason**  
Senior Commercial Analyst  
Electricity Codes  
Transmission Commercial  
National Grid

Tel: 01926 656379  
Mob: 07770 982225  
alex.thomason@uk.ngrid.com

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**From:** garth.graham@sse.com [mailto:garth.graham@sse.com]  
**Sent:** Wednesday, June 08, 2011 4:22 PM  
**To:** Stuart Cotten  
**Cc:** Abid Sheikh; Quinn, Angela - UK Legal; .Box.Cusc.Team; Clark, Emma; Sutton, Esther; Jessica Hodges; Jonathan Dixon; Peter Bolitho; Eyre, Steven; Lam, Steven  
**Subject:** RE: CMP195: Finalisation of Workgroup Consultation - COMMENTS PLEASE

Folks,

Stuart's note raising some very pertinent points. I was my clear recollection; from the detailed discussions during the CGR / SCR Mods; that the 1st April implementation of charging changes was what CUSC parties expected / required / agreed when the changes went through at the end of last year.

I appreciate time is very tight; might one way forward be to agree to proceed on the basis of keeping the draft legal text as it currently is - in other word without either (i) the National Grid, or (ii) Ofgem or (iii) Stuart comments - and ask a specific consultation question on this area of work?

Regards

Garth

From: Stuart Cotten <stuart.cotten@draxpower.com>  
To: "Eyre, Steven" <Steven.Eyre@edfenergy.com>, ".Box.Cusc.Team" <cusc.team@uk.ngrid.com>, Abid Sheikh <Abid.Sheikh@ofgem.gov.uk>, "Quinn, Angela - UK Legal" <angela.quinn@uk.ngrid.com>, "Clark, Emma" <emma.clark@uk.ngrid.com>, "Sutton, Esther" <Esther.Sutton@eon-uk.com>, Jessica Hodges <Jessica.Hodges@ofgem.gov.uk>, Jonathan Dixon <Jonathan.Dixon@ofgem.gov.uk>, Peter Bolitho <Peter.Bolitho@eon-uk.com>, "Lam, Steven" <steven.lam@uk.ngrid.com>, <garth.graham@sse.com>  
Date: 08/06/2011 16:05  
Subject: RE: CMP195: Finalisation of Workgroup Consultation - COMMENTS PLEASE

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All,

Apologies, I still have an issue with the proposed addition to 8.23.13. This paragraph is the only place in Section 8 that states modifications to Charging Methodologies can only take effect from 1 April. There was significant discussion surrounding implementation dates of Charging Methodologies as a part of the Code Governance Review work-stream. I understood the previous landing point to be that changes to Charging Methodologies would only be implemented at the start of a charging year. However, the change to 8.23.13 suggests that “1 April” may change on direction of the Authority to, say, “8<sup>th</sup> August”; whereas I believe the intent of Abid and Jessica’s amendment was to act as a “general catch-all” for the beginning of paragraph 8.23.13.

I’m sure it could be better phrased than I have set out below, but I think the intent of Ofgem’s changes would be better reflected as follows:

“A modification of the CUSC shall take effect from the time and date specified in the direction, or other approval, from the Authority referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) Business Days after the date of such direction, or other approval, from the Authority except in relation to a modification of the CUSC in respect of the Charging Methodologies, which may only take effect from 1 April of any given year. **The Authority may direct the Panel to amend the time and date that a modification of the CUSC shall take effect in accordance with Paragraphs 8.23.9, 8.23.12 and 8.23.13 following consultation with the Panel.**”

OR

“A modification of the CUSC shall take effect from the time and date specified in the direction, or other approval, from the Authority referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) Business Days after the date of such direction, or other approval, from the Authority ~~except in relation to a modification of the CUSC in respect of the Charging Methodologies, which may only take effect from 1 April of any given year~~ **unless otherwise directed by the Authority in accordance with Paragraphs 8.23.9, 8.23.12 and 8.23.13 following consultation with the Panel. However, modifications to the CUSC in respect of the Charging Methodologies may only take effect from 1 April of any given year.**”

The key issue is that there should be no ambiguity over whether Charging Methodologies can change on dates other than “1 April”.

However, if the intent of the change to 8.23.13 was to allow Charging Methodologies to change on dates other than 1 April, then I do not believe this is the forum to make this change; CMP195 is meant to be a “code tidying” exercise. Such change should be more widely consulted upon.

Kind regards,  
Stuart.

**Stuart Cotten** | Market Development Manager | Regulation and Policy | Drax Power Limited  
T: +44 (0)1757 612 751 | M: +44 (0)7894 403 896 | E: stuart.cotten@draxpower.com

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**From:** Eyre, Steven [<mailto:Steven.Eyre@edfenergy.com>]

**Sent:** 08 June 2011 10:59

**To:** .Box.Cusc.Team; Abid Sheikh; Quinn, Angela - UK Legal; Clark, Emma; Sutton, Esther; Jessica Hodges; Jonathan Dixon; Peter Bolitho; Lam, Steven; Stuart Cotten; garth.graham@sse.com

**Subject:** RE: CMP195: Finalisation of Workgroup Consultation - COMMENTS PLEASE

Alex

I believe that we all agreed during the teleconference to use the wording provided in Steven's email of 26<sup>th</sup> May. Consequently, it is this wording that should go in the report.

That said I don't believe either this wording or the new wording proposed by Ofgem yesterday seeks to provide any additional powers to that which exists in the code already.

Regards

Steven

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**From:** .Box.Cusc.Team [<mailto:cusc.team@uk.ngrid.com>]

**Sent:** 07 June 2011 16:02

**To:** Abid Sheikh; .Box.Cusc.Team; Quinn, Angela - UK Legal; .Box.Cusc.Team; Clark, Emma; Sutton, Esther; Jessica Hodges; Jonathan Dixon; Peter Bolitho; Eyre, Steven; Lam, Steven; Stuart Cotten; garth.graham@sse.com

**Subject:** CMP195: Finalisation of Workgroup Consultation - COMMENTS PLEASE

Dear CMP195 Workgroup Members

Thank you for your attendance at today's teleconference to finalise the Workgroup Consultation document for CMP195. I believe the Workgroup agreed the following:

- a) Code Administrator to issue the Workgroup Consultation document tomorrow (8<sup>th</sup> June 2011) for a 3 week consultation
- b) Code Administrator to revise the Workgroup timetable as set out below, pending confirmation of a post-Workgroup Consultation meeting (nb. This will not require Panel approval as it still meets the July Panel date)
- c) Workgroup Members to agree the date of the post-Workgroup Consultation meeting by correspondence

The Workgroup also reached a conclusion on the two outstanding issues with the legal text, as summarised below.

#### **Issue 1: Implementation date**

After some debate, Workgroup Members agreed to the text provided by National Grid in Steven Lam's email of 26<sup>th</sup> May 2011 (at 15.39), as reproduced below. The text in bold font is that which is proposed to be added. References to paragraphs 8.23.9, 8.23.12 and 8.23.13 refer to the "Send Back Process" and the revised implementation date process

introduced by CAP179.

Paragraph 8.28.3: “A modification of the CUSC shall take effect from the time and date specified in the direction, or other approval, from the Authority referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) Business Days after the date of such direction, or other approval, from the Authority except in relation to a modification of the CUSC in respect of the Charging Methodologies, which may only take effect from 1 April of any given year **unless otherwise directed by the Authority in accordance with Paragraphs 8.23.9, 8.23.12 and 8.23.13 following consultation with the Panel.**”

#### **Issue 2: Definition of “Directions”**

A majority of Workgroup Members agreed that a definition of “directions” should not be included within Section 11 of the CUSC as it may cause more ambiguity than it would resolve.

#### **Next steps**

Please note the email from Ofgem below which proposes further revisions to paragraph 8.28.3 following the discussions this lunchtime. **I would be grateful to receive your comments on Ofgem’s proposed revised text by 12pm tomorrow (Wednesday) to allow us time to finalise the report to issue by close of play tomorrow.** If you are not able to respond by this time or would like further time to consider this, please let us know.

Kind regards,

**Alex Thomason**

**CMP195 Workgroup Chairman**

Senior Commercial Analyst

Electricity Codes

Transmission Commercial

National Grid

Tel: 01926 656379

Mob: 07770 982225

alex.thomason@uk.ngrid.com

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**From:** Abid Sheikh [<mailto:Abid.Sheikh@ofgem.gov.uk>]

**Sent:** Tuesday, June 07, 2011 2:37 PM

**To:** .Box.Cusc.Team

**Cc:** Thomason, Alex; Quinn, Angela - UK Legal; .Box.Cusc.Team; Clark, Emma; Sutton, Esther; Jessica Hodges; Jonathan Dixon; Peter Bolitho; steven.eyre@edfenergy.com; Lam, Steven; Stuart Cotten; garth.graham@sse.com

**Subject:** RE: CMP195 Workgroup Consultation - additional observations

**Importance:** High

Dear all,

Many thanks for the conference call this morning which was useful.

As mentioned in the call, Jessica would like some further time to consider the points raised by

Garth in his email from Friday. We are not entirely convinced that all other provisions of the CUSC, e.g. urgency etc, may not result in a different implementation date to 1 April, but we do not want to delay the issuing of the WG consultation any further while we check these points ourselves. Therefore we propose the following amended drafting which should cover any changes that are made in accordance with the rules contained in section 8:

8.28.3 A modification of the **CUSC** shall take effect from the time and date specified in the direction, or other approval, from the **Authority** referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) **Business Days** after the date of such direction, or other approval, from the **Authority** except in relation to a modification of the **CUSC** in respect of the **Charging Methodologies**, which may only take effect from 1 April of any given year **unless otherwise directed by the Authority in accordance with this Section 8 [following consultation with the Panel]**.

At least in this way, if there are any other further provisions in the CUSC which may result in a different implementation date to 1 April then these are covered off and can be dealt with through CUSC code processes. Further, the words "following consultation with the Panel" would not be needed as we could only direct a different date in accordance with the processes in section 8 which would include consultation with the Panel.

Please let us have your thoughts.

Kind regards

Abid

**Abid Sheikh**  
Manager Industry Codes  
Licensing and Industry Codes  
107 West Regent Street  
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**From:** Abid Sheikh  
**Sent:** 06 June 2011 17:55  
**To:** 'garth.graham@sse.com'; .Box.Cusc.Team  
**Cc:** Thomason, Alex; Quinn, Angela - UK Legal; .Box.Cusc.Team; Clark, Emma; Sutton, Esther; Jessica Hodges; Jonathan Dixon; Peter Bolitho; steven.eyre@edfenergy.com; Lam, Steven; Stuart Cotten  
**Subject:** RE: CMP195 Workgroup Consultation - additional observations

Garth,

Many thanks for the further comments.

As you say, these can be covered in the conference call tomorrow. However, on the specific points

that your email raised, we have the following further detailed comments:

### **SCR direction – implementation date**

We consider that the following points clarify the intended process from our point of view.

- Following an SCR, Ofgem may direct the licence holder to raise a modification proposal and the licence holder must raise the modification proposal in accordance with the SCR direction.
- We consider that the SCR direction may specify a proposed implementation date for such a proposal. For arguments sake, assuming for the purposes of the proposed amendment in question that it were correct that the reference to timetable in paragraph (ii) of the definition of “directions” in the licence only covers up to the raising of a proposal – which we do not accept is right or wrong or comment on further here – we consider that in any case the CGR Final Proposals and SLC C10 (including under paragraph (i) definition of “directions”) do not limit what the SCR direction itself may contain and it is open to the Authority to determine what such a direction should appropriately contain in the context of our SCR conclusions including a proposed implementation date.
- The licensee is required to *make* a modification proposal, in accordance with the relevant direction, which can include making the proposal with a particular proposed implementation date. The SCR direction does not require the licensee to implement the proposal irrespective of its merits – it requires it to make the proposal.
- The proposal is then subject to the industry process, including withdrawal with the Authority’s consent. Alternative proposals with differing proposed implementation dates may be raised. If the Panel believes that the proposed implementation date in the original SCR-directed proposal is no longer appropriate they may refer to the Authority through the usual processes. Further, if a proposal was submitted to the Authority for decision and the Authority found that the proposed implementation date is no longer appropriate, it could ask the Panel to provide a revised implementation date. Only after the Authority’s decision may the licensee be required to implement the proposal. It may well be that the date directed is achievable if the proposal is approved by the Authority and, if the date becomes unworkable, it could be amended via the code process.
- We disagree that a power to modify an SCR direction is ruled out, in fact the Authority does have the power to modify a SCR direction. The following paragraph 1.54 of Appendix of the CGR Final Proposals, just before the paragraph you quote, states:

“We acknowledge concerns voiced by respondents about regulatory uncertainty, though we note that there are **existing provisions, for instance under the Electricity Act 1989, that allow for Directions to be varied or revoked. We do not propose to change such existing powers in the**



**context of SCRs. We consider that the existing processes and our existing powers can adequately address the issue of responding to new information.”** (emphasis added)

We note that section 107 of the Electricity Act 1989 provides that:

“Any power conferred by this Act to give a direction shall, unless the context otherwise requires, include power to vary or revoke the direction”.

That is why we state in your quoted paragraph 1.55:

“We do not therefore propose to pursue **a new**, SCR-specific power to modify SCR Directions”. (emphasis added)

To summarise, if we directed a different proposed implementation date to 1 April in a SCR directed proposal (or under send-back, under revised implementation provisions, under the urgency procedures, or if we direct changes to implementation of a charging modification under progress report provisions or direct extensions to implementation dates under paragraph 8.3.3) there would be a clear conflict with paragraph 8.28.3 as paragraph 8.28.3 does not allow for any change in the 1 April implementation date in respect of charging methodologies.

### **SLC C10(6)(c)**

In addition to that conflict, we also note that SLC C10(6)(c) provides that the CUSC modification procedures must provide for the timetable (referred to in paragraph SLC C10(6)(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 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. Paragraph SLC C10(6)(b)(v) provides that the report must contain a timetable for implementation including the date with effect from which such modification would take effect. This is not reflected in paragraph 8.28.3 as there is no express provision for amendment to the 1 April date by the Panel with the consent of the Authority or as directed by the Authority.

Therefore, we strongly recommend that the suggested wording (“unless otherwise directed by the Authority following consultation with the Panel”) is included at the end of paragraph 8.28.3 to cover off all possibilities set out above and importantly to comply with SLC C10(6)(c). We recognise that any change to a 1 April implementation would be rare and possibly exceptional but cannot be ruled out.

### **Conference tomorrow**

Our concern lies with the amendment of the 1 April implementation provision in paragraph 8.28.3 and how that could potentially have to be changed, including due to a modification made under an SCR direction. We consider it is best to keep our discussion tomorrow to this particular issue and not other SCR direction timetabling matters e.g. development / consultation and the implications of that for the code process which, although helpful, are not

directly relevant for the purposes of the proposed amendment to paragraph 8.28.3 given that we consider that an SCR direction may include a proposed implementation date whether or not paragraph (ii) of the definition of "directions" in the licence applies as set out above.

I've again copied this email to everyone so they can see our comments prior to the conference call tomorrow.

Regards

Abid

**Abid Sheikh**  
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**From:** garth.graham@sse.com [<mailto:garth.graham@sse.com>]

**Sent:** 03 June 2011 16:28

**To:** .Box.Cusc.Team

**Cc:** Abid Sheikh; Thomason, Alex; Quinn, Angela - UK Legal; .Box.Cusc.Team; Clark, Emma; Sutton, Esther; Jessica Hodges; Jonathan Dixon; Peter Bolitho; steven.eyre@edfenergy.com; Lam, Steven; Stuart Cotten

**Subject:** RE: CMP195 Workgroup Consultation - additional observations

Abid,

Thank you for your emails of 26th May (13:28 and 17:41).

I appreciate the Workgroup will be discussing the matters raised in my email and those from yourself and Steve (26th May, 15:39) in our teleconference next week. However, prior to that I thought I'd provide some further observations to assist those Workgroup deliberations.

In particular I've been giving further consideration to the comments regarding the Authority 'direction' to the licensee noted in your 17:41 email:-

".....we consider that "the timetable for the licensee to comply with the Authority's direction" may include potential implementation dates. In fact, these may - in some cases - be crucial to give effect to modifications in line with SCR conclusions."

1)

This could be construed as implying that if the direction timetable does indeed include up to the implementation date (and is not limited to just the time for raising of the directed Modification proposal) that Ofgem, in the SCR direction, is determining the timetable for

when the Modification proposal is:-

- i) raised (which I think we both of agree is correct);
- ii) progressed through the code change process# (including Workgroup assessment, industry consultation and Panel deliberation); and
- iii) implemented (in order to give effect to the directed Modification in line with the SCR conclusions).

In so doing Ofgem, it could be argued, is acting as 'judge, jury and executioner' as its predetermining that the change must be made in that in order to issue such a definitive timetable (all the way through to the implementation date) Ofgem is saying that the licence holder must give effect to the Modification in line with the SCR conclusions by the directed implementation date.

Thus in order to comply with the SCR direction (and give effect to the directed Modification in line with the SCR conclusions) by the directed implementation date the licence holder 'must' implement the Modification change irrespective of its merits - otherwise it will have failed to discharge its legal obligation(s) arising from the direction.

If this were the case might this be considered to have constrained (fettered?) the decision making etc., of the various stakeholders, and especially the licence holder and the Authority?

# [this assumes a code change process is followed vis-a-vis the suggestion that the licence holder, via the SCR direction, is required to undertake this process in order develop / consult etc.]

2)

Mindful of the role of the Panel (advised by the Code Administrator) in determining (i) how, (ii) by whom and (iii) over what timeframe all CUSC Modification proposal will be taken forward I'd welcome clarification of how the Authority plans to carry out this role in the case of the SCR directed Modification(s) in order for it to determine (and thus direct) the implementation date.

In this respect I'm mindful that an SCR type Modification proposal is, by its very nature, likely to be on a substantive subject matter. An example of Modification proposals that might be akin to that of an SCR Modification proposal could be one, or more, of the suite of TAR Modifications. I'm conscious that when we (as industry, code administrator and regulator) entered into the TAR work we had no idea that each of the the 5-6 pages or so of Modification proposals would, at the end of the process, be turned into many hundreds of pages of detailed assessment, consultation responses, alternatives and legal text etc., (as shown in the Final Modification Reports).

Given this it would be extremely brave for anyone to determine and direct a set timetable; before the directed Modification proposal itself had even been written; all the way through from the inception of the directed Modification to its implementation with such absolute certainty.

With a none directed Modification proposal it would, for example, if necessary (and subject to the Authority veto), be possible for the Panel to extend the timetable. However, as noted in 5 (e) below, it would not be possible to extend the directed timetable (as the

power to modify an SCR Direction - which includes the timetable - is ruled out).

3)

Furthermore, if the direction did indeed apply to the whole timetable, including the implementation date, then it could be argued that in issuing such a direction that the Authority might be placing undue restrictions on (i) the workgroup\* (ii) the industry\* and (iii) the Panel\* in that their ability to consider any solutions to the directed Modification and also any alternative solution(s) (to address the defect) could be seriously compromised and constrained by the need to ensure that any of the solutions would; in both development and implementation terms; not go beyond the directed Modification timetable.

As I'm sure you appreciate this could seriously impede the code change process and fetter the ability for all concerned to carry out their respective duties under the Codes, Licences and Acts.

It could also be said to be a less than efficient process in that by removing the ability for all concerned to consider all possible solutions to address the defect (because they would 'time out'; e.g. go beyond the directed implementation date) a 'better' solution to the defect may not be developed.

It would also seem to run counter to the suggestion that it would be possible to raise alternatives to the directed Modification - see 5 (f) below.

[\* this assumes they are engaged in this process vis-a-vis the suggestion that the licence holder, via the SCR direction, is required to undertake this process in order develop / consult etc.]

4)

Notwithstanding my previous comments; about the time taken within the code change process (by the workgroup, industry, Panel etc.) and this being out with the control of the licence holder; how could the licence holder comply with the directed implementation date when the decision timeframe for approving the directed Modification proposal resides with the Authority?

If, for example, the Authority, in directing the timetable to implementation, had determined that no RIA would be produced and then subsequently chose to produce a RIA this could (would?) lead to a delay in the implementation date. Given that modifying an SCR direction is ruled out (see 2 and 5 (e)) would this oblige the Authority to take infringement proceedings against the licence holder (for failing to comply with the direction and implementing the directed Modification on the directed date)?

5)

Before starting this section I should point out that with the CUSC Panel last Friday, the need to review / comment on the CMP191 et al draft workgroup report, respond to the P264 Panel consultation, respond to the CMP196 consultation (and, of course, attend the associated Workgroup meeting this morning that we were both at), consider last Friday's Project TransmiT letter and prepare for the CMP192 Workgroup meeting this coming Monday I've not had a chance to review all the Code Governance Review papers in detail and therefore have only briefly gone through the CGR Final Proposals published in March

2010.

I note your reference to paragraph 1.36 of the Final Code Governance Review proposals from Ofgem (published in March 2010):-

"Further, paragraph 1.36 of Appendix 1 to our CGR Final Proposals, states that the obligation in the licence to raise and facilitate consultations on a modification(s) in response to an SCR direction would be generic in form. In particular, relevant licensees would be obliged within a specified period of time, via a direction issued by the Authority, to develop and consult on modifications that give practical effect to the matters set out in the SCR related direction."

However, I'm mindful that we need to consider paragraph 1.36 in the round and, in particular, in the context of that part of Appendix 1 "Outcome of an SCR Ofgem's - Final Proposal" (extracts below for completeness / ease of reference) which runs from paragraph 1.35 up to and including paragraph 1.43 (together with other relevant parts of Appendix 1, such as paragraphs 1.51 and 1.55).

a)

As you indicate, paragraph 1.36 does oblige the licence holder to "raise and facilitate consultation on modifications that give practical effect to any SCR related directions issued by the Authority."

However, the preceding paragraph (1.35) states that:-

*"...Ofgem will publish SCR Conclusions on the issues and any actions that are in our view necessary. This document may be accompanied, or followed shortly, thereafter by SCR Directions to the relevant licensee to develop and submit to the relevant body one or more modification proposals in accordance with a timetable specified by Ofgem."*

This, it seems to me, supports my previous comments (in my email of 11:03 on 26th May) that the timetable indicated in the SCR direction relates only to the development and submission (by the licence holder) of the directed Modification proposal to the Panel only and not, for example, beyond that to the implementation date.

b)

My view in this regard is, I believe, further supported by the statement at paragraph 1.43:-

*"We propose that the time period specified for the development of the modification proposal(s) should be assessed on a case-by-case basis (having regard to industry feedback) and that the Authority should have the discretion to vary the time period according to the number and complexity of modification proposals that need to be produced. It is likely however that the deadline will be in the range of one to four weeks."*

This statement seems to support the notion that the development is related only to the 'drafting' (by the licence holder) of the directed Modification proposal itself (e.g. 5-6 pages) and not, for example, the 'assessment' (by a Workgroup~, industry~, Panel~ etc.), of the solution etc., or the overall 'development' (through the code change process) of that directed Modification proposal (all the way through to implementation) because if it did then the timetable stated (within the range of one to four weeks) would be totally impractical

from the point of view of the code change process; from being produced by the licence holder all the way to implementation, including, for example, the Authority decision making process+; given the substantive nature of the SCR subject matter (such as, perhaps, the outcome of Project TransmiT).

As an aside, if I am incorrect in this regard, then it would appear that all SCR directed Modifications will have to be treated as 'urgent' (irrespective of whether they do, or far more likely do not, meet the urgency criteria) in order for them to complete the whole change process from inception to implementation within the timetable range of one to four weeks.

[~ this assumes they are engaged in this process vis-a-vis the suggestion that the licence holder, via the SCR direction, is required to undertake this process in order develop / consult etc.]

[+ Noting the probably need for a RIA, give the substantive nature of an SCR Modification.]

c)

This, in turn, appears to be supported by the statement in paragraph 1.40:-

*"Although the relevant licensee would be required to draft and consult on a modification, the proposal would then proceed through the usual industry consultation processes. Code parties (including the licensee subject to the direction) would be entirely free to propose alternative modifications and vote at panel meetings in accordance with a code's relevant objectives."*

Its seems clear, from this, that once a directed Modification proposal has been developed and consulted upon (by the licence holder) it would then be submitted to the Panel and proceed through the code change process (the timetable for which, including the setting of the implementation date, being determined by the usual industry process - by the Panel etc., - rather than the Authority).

This appears to show that the directed timetable does not, on reflection, relate to the time after the licence holder has submits the directed Modification proposal to the Panel (and thus the directed timetable does not extend all the way through to the implementation date).

This is further support, it appears, by the practical 'example' provided by Ofgem in their recent Project TransmiT letter - see 6 below.

d)

However, if the construct of paragraph 1.36 is that the obligation (from the SCR direction) on the licence holder is indeed to develop and consult on the directed Modification proposal and give practical effect to that directed Modification; and do so by the directed implementation date; then how exactly will this be done as there is no governance, under the Transmission Licence etc., for the licence holder to carry out this function - as this resides, in the licence and CUSC, with the Panel.

e)

Notwithstanding the other comments, if the intention was that the directed timetable did indeed extend throughout the code change process; from inception up to and including the implementation date; then (given that the time from the raising of a substantive code change - such as an SCR type change - to its eventual implementation could easily be twelve months or more) one would have expected that Ofgem would have, pragmatically, given themselves the power to change the directed timetable if required.

However, the wording in the relevant part of Appendix 1 (namely paragraph 1.55) give no such indication of this:-

*"We note that if new information came to light after the SCR Direction, or events dictated that the SCR modification was no longer appropriate, then the Authority may revoke its direction or the proposal itself could be varied or ultimately rejected by the Authority. We do not therefore propose to pursue a new, SCR-specific power to modify SCR Directions."*

Rather, as stated in the last sentence, Ofgem rules out "a new, SCR-specific power to modify SCR Direction". This therefore rules out any change to the directed timetable (as this forms part of the SCR Direction).

This further supports the notion that the original intent was that the directed timetable was for a 'short' period (in the range of one to four weeks) which is highly unlikely to need to change once set (as the variables that could possibly extend that timeframe could reasonably have been foreseen at the time the direction was issued some one to four weeks before).

f)

In relation to (e) there is a further aspect to consider (which reinforces the notion that the directed timetable could need to change over time).

There is a very distinct possibility for the need to 'extend' the directed timetable (if, as suggest, the directed timetable is all encompassing from inception up to and including the implementation date) given the statement in paragraph 1.37:-

*"As recognised in our proposals on alternative proposals, we consider there is still a degree of flexibility for development of the proposal following a Direction through alternative modifications. We would welcome alternatives to the extent that they also seek to address the conclusions of the SCR."*

The development of alternatives to the directed Modification is; based on previous experience of CUSC code changes; likely to require additional time to develop etc., as well as give rise to possibly longer implement date(s) (beyond the directed implementation date).

It seems, from paragraph 1.37, that the Authority was amendable to alternative to the directed Modification proposal being developed. It therefore seems strange that they would then curtail the timetable for the alternatives as it would not be possible for anyone, at the point that the directed timetable was set, to determine what, if any, alternatives to the defect there might be.

6)

Finally I'm mindful of the Ofgem letter issued last Friday (27th May) regarding a possible SCR relating to Project TransmiT.

The last two pages of that letter provides clarification on the SCR process and there are, at the top of page 6, comments on the "Scale and indicative timetable", and in particular:-

*"At that stage [after the conclusion of the SCR], Ofgem would, if appropriate, issue an SCR direction to NGET to raise the appropriate changes to the CUSC. We note that the timescales within which we would then be presented with a proposal on which to make a decision would be dependent on the industry process and what, if any, further industry consideration under that process the Panel consider may be required. "*

The last sentence of this quote is perhaps the most pertinent to our deliberations. If Ofgem did indeed have the ability to direct the timetable beyond just the raising, by the licence holder (NGET), of the directed Modification proposal one would have expected this to be clearly set out in the letter.

However, from a simple reading of the quote, it appear that the letter is supporting the notion that the directed timetable is, in fact, limited to just the time from the issuing of the direction to the raising (i.e. submission to the Panel) by the licence holder of the (5-6 page?) Modification proposal that gives effect to the conclusion of the SCR.

Therefore, in light of these (and my previous) comments I think that the suggested revision to paragraph 8.28.3 from National Grid (in Steve's email of 15:39 on the 26th May) is the most appropriate way for the Workgroup to proceed.

I hope the Workgroup finds these observations of help in there deliberations during the teleconference next Tuesday.

Regards

Garth

[Extract from Ofgem's Codes Governance Review – Final Proposals March 2010 - Appendix 1]

### **Outcome of an SCR**

1.35. Following consultation on final conclusions, Ofgem will publish SCR Conclusions on the issues and any actions that are in our view necessary. This document may be accompanied, or followed shortly, thereafter by SCR Directions to the relevant licensee to develop and submit to the relevant body one or more modification proposals in accordance with a timetable specified by Ofgem.

1.36. We propose that the relevant licence holder should have an obligation to raise and facilitate consultation on modifications that give practical effect to any SCR-related directions issued by the Authority. We propose that this obligation would be generic in form and should be introduced through a licence modification. Relevant licensees would be obliged within a specified period of time, via a direction issued by the Authority, to develop and consult on modifications that give practical effect to the matters set out in the SCR



related direction. We propose that the relevant licensee would not be permitted to withdraw its modification proposal without the consent of the Authority.

1.37. As recognised in our proposals on alternative proposals, we consider there is still a degree of flexibility for development of the proposal following a Direction through alternative modifications. We would welcome alternatives to the extent that they also seek to address the conclusions of the SCR. Whilst we would not fetter the discretion of the Authority in relation to any such modification proposals, we envisage that we will actively participate in any development groups and provide any necessary further clarity on our thinking.

1.40. Although the relevant licensee would be required to draft and consult on a modification, the proposal would then proceed through the usual industry consultation processes. Code parties (including the licensee subject to the direction) would be entirely free to propose alternative modifications and vote at panel meetings in accordance with a code's relevant objectives.

1.43. We propose that the time period specified for the development of the modification proposal(s) should be assessed on a case-by-case basis (having regard to industry feedback) and that the Authority should have the discretion to vary the time period according to the number and complexity of modification proposals that need to be produced. It is likely however that the deadline will be in the range of one to four weeks.

#### **Drafting of SCR-related code modifications**

1.51. On that basis we propose to take forward option 1 and option 2, which involve Ofgem setting down the principles that should inform any code modification proposal and perhaps outlining the code modification proposal itself. Ofgem would assess on a case-by-case basis whether to set out high level or detailed principles only. Whilst in some cases it may be appropriate to include an outline code modification, we will not expect to provide complete legal drafting and have not carried forward our proposed powers to do so.

#### **Power to modify a Direction**

1.55. We note that if new information came to light after the SCR Direction, or events dictated that the SCR modification was no longer appropriate, then the Authority may revoke its direction or the proposal itself could be varied or ultimately rejected by the Authority. We do not therefore propose to pursue a new, SCR-specific power to modify SCR Directions. However, we propose to amend the licence to ensure that a modification proposal raised in compliance with a SCR Direction may not be withdrawn without the Authority's prior consent. In addition, Ofgem fully intends to liaise with industry throughout the code modification process (for example by attending working group meetings) and will participate in any discussions about the impact of new information on an SCR Direction or modification.

[end]

From: ".Box.Cusc.Team" <cusc.team@uk.ngrid.com>

To: <garth.graham@sse.com>, ".Box.Cusc.Team" <cusc.team@uk.ngrid.com>, "Abid Sheikh" <Abid.Sheikh@ofgem.gov.uk>, "Thomason, Alex" <alex.thomason@uk.ngrid.com>, "Quinn, Angela - UK Legal" <angela.quinn@uk.ngrid.com>, "Clark, Emma" <emma.clark@uk.ngrid.com>, "Sutton, Esther" <Esther.Sutton@eon-uk.com>, "Jessica Hodges" <Jessica.Hodges@ofgem.gov.uk>, "Jonathan Dixon"

<Jonathan.Dixon@ofgem.gov.uk>, "Peter Bolitho" <Peter.Bolitho@eon-uk.com>,  
<steven.eyre@edfenergy.com>, "Lam, Steven" <steven.lam@uk.ngrid.com>, "Stuart Cotten"  
<stuart.cotten@draxpower.com>

Date: 01/06/2011 14:13

Subject: RE: CMP195 Workgroup Consultation - proposed additional meeting

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From: ".Box.Cusc.Team" <cusc.team@uk.ngrid.com>

To: "Jonathan Dixon" <Jonathan.Dixon@ofgem.gov.uk>, "Stuart Cotten" <stuart.cotten@draxpower.com>, "Abid Sheikh" <Abid.Sheikh@ofgem.gov.uk>, "Lam, Steven" <steven.lam@uk.ngrid.com>,  
<garth.graham@sse.com>, "Sutton, Esther" <Esther.Sutton@eon-uk.com>, "Peter Bolitho"  
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Cc: "Virk, Bali" <bali.virk@uk.ngrid.com>, "Clark, Emma" <emma.clark@uk.ngrid.com>, "Jessica Hodges"  
<Jessica.Hodges@ofgem.gov.uk>, "Thomason, Alex" <alex.thomason@uk.ngrid.com>, "Quinn, Angela - UK  
Legal" <angela.quinn@uk.ngrid.com>

Date: 27/05/2011 15:49

Subject: CMP195 Workgroup Consultation - proposed additional meeting

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Dear CMP195 Workgroup members

Thank you for your email correspondence on CMP195. In order to allow all Workgroup members the opportunity to understand all the issues that have been raised recently, it would seem appropriate to hold a further Workgroup teleconference to bring everyone up to speed, as Jon proposes in his email below.

Unfortunately, both Steve Lam (the Proposer) and I (CMP195 Workgroup Chairman) are on leave next week so would not be available until Monday, 6<sup>th</sup> June for a teleconference.

We have reviewed the agreed timetable for the Workgroup and it should still be possible for the Workgroup Report to be presented to the July 2011 Panel meeting, even if we delay publication of the Workgroup Consultation.

We therefore propose that a Workgroup meeting should be held by teleconference as early as possible the week commencing Monday, 6<sup>th</sup> June 2011. **Please respond confirming your availability to this email address** (the CUSC team inbox) so that my colleagues can confirm a meeting date next week in our absence.

If you have any concerns over this approach, please respond as soon as possible.

Regards,

Alex

**Alex Thomason**

Senior Commercial Analyst

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**From:** Jonathan Dixon [<mailto:Jonathan.Dixon@ofgem.gov.uk>]  
**Sent:** Friday, May 27, 2011 3:29 PM  
**To:** Stuart Cotten; Abid Sheikh; Lam, Steven; garth.graham@sse.com  
**Cc:** Thomason, Alex; Virk, Bali; Clark, Emma; Sutton, Esther; Peter Bolitho; steven.eyre@edfenergy.com; Jessica Hodges  
**Subject:** RE: CMP195 Draft Workgroup Consultation

A fuller discussion on these points would seem appropriate – our concern would be that it doesn't come after the WG consultation has already been issued.

If we can arrange a teleconference for next week we'll give a fuller explanation of our concerns and why it is now appropriate to try and bring the CUSC text into line with wider CUSC provisions and the licence more generally. We would therefore support the WG consultation being held off until the discussion has been held.

Jon

**From:** Stuart Cotten [<mailto:stuart.cotten@draxpower.com>]  
**Sent:** 27 May 2011 15:17  
**To:** Abid Sheikh; Lam, Steven; garth.graham@sse.com  
**Cc:** Thomason, Alex; Virk, Bali; Clark, Emma; Sutton, Esther; Jonathan Dixon; Peter Bolitho; steven.eyre@edfenergy.com; Jessica Hodges  
**Subject:** RE: CMP195 Draft Workgroup Consultation

All,

Apologies for wading into this discussion quite late in the email exchange, but I am feeling particularly uneasy about the speed that these changes have gone back and forth when (a) they were not a part of Ofgem's original list of comments (which triggered the modification) and (b) they were not considered during the original group discussion.

We may want to step back for a moment and consider how we take the new comments forward. We should not be rewording the legal text without thoroughly considering the wider effects on the code modification / SCR process.

Would it be worth us having a quick call?

Kind regards,

Stuart.

**Stuart Cotten** | Market Development Manager | Regulation and Policy | Drax Power Limited

**From:** Abid Sheikh [<mailto:Abid.Sheikh@ofgem.gov.uk>]

**Sent:** 26 May 2011 17:41

**To:** Lam, Steven; garth.graham@sse.com

**Cc:** Thomason, Alex; Virk, Bali; Clark, Emma; Sutton, Esther; Jonathan Dixon; Peter Bolitho; steven.eyre@edfenergy.com; Stuart Cotten; Jessica Hodges

**Subject:** RE: CMP195 Draft Workgroup Consultation

Hi Steve,

We've considered your response below and your suggested changes. We maintain that our suggested changes do have merit and have the following comments on your suggestions:

#### Paragraph 8.28.3 – Implementation

We consider that the revised drafting does not capture SCR directions. Given this, we consider that our previously suggested wording captures all the potential possibilities.

8.28.3 A modification of the **CUSC** shall take effect from the time and date specified in the direction, or other approval, from the **Authority** referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) **Business Days** after the date of such direction, or other approval, from the **Authority** except in relation to a modification of the **CUSC** in respect of the **Charging Methodologies**, which may only take effect from 1 April of any given year **unless otherwise directed by the Authority following consultation with the Panel**.

#### Definition of "Directions"

We consider this would be helpful, does not require a wholesale change to the legal text and would aid clarity. It would also help differentiate clearly between any 'Directions' issued by the Authority pursuant to a SCR and the 'directions' referred to in the definition of "Transmission Business" and other types of direction as you highlighted in your reply. The definition of "Directions" that is in SLC C10 could be replicated in Section 11 of the rules as follows. Then the term "Directions" in the context of an SCR, is used only in paragraphs 8.17.6, 8.17.8 and 8.17.9 and used in the definition of "Significant Code Review Phase" which would require defining as "Directions".

Definition:

"Directions": means, in the context of a **Significant Code Review**, direction(s) issued following publication of significant code review conclusions which shall contain:

(i) instructions to the licensee to make (and not withdraw, without the

**Authority's** prior consent) a modification proposal;

(ii) the timetable for the licensee to comply with the **Authority's** direction(s);  
and

(iii) the **Authority's** reasons for its direction(s).

I'm on leave tomorrow but please feel free to discuss further, if necessary, with either Jon or Jessica Hodges who I've copied into this email.

Kind regards

Abid

**Abid Sheikh**

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**From:** Lam, Steven [<mailto:steven.lam@uk.ngrid.com>]

**Sent:** 26 May 2011 15:39

**To:** Abid Sheikh; garth.graham@sse.com

**Cc:** Thomason, Alex; Virk, Bali; Clark, Emma; Sutton, Esther; Jonathan Dixon; Peter Bolitho; steven.eyre@edfenergy.com; stuart.cotten@draxpower.com

**Subject:** RE: CMP195 Draft Workgroup Consultation

Abid, Garth,

Thanks for your comments.

I have agreed with most of your comments and will include wording on 8.25.14 in relation to materially affected parties.

In relation to 8.28.3, I agree with Garth that the definition of "direction" in the licence only covers those mods which are related to an SCR direction rather than covering all mods.

The timetable for the licensee to comply with the directions appears to be silent on implementation dates. Taking this into account, I also agree with Abid that the Authority may require revised implementation dates for **any** proposal (including charging methodology changes) in accordance with paragraph 8.23.9.

Therefore I suggest the wording as follows:

8.28.3 A modification of the **CUSC** shall take effect from the time and date specified in the direction, or other approval, from the **Authority** referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) **Business Days** after the date of such direction, or other approval, from the **Authority** except in relation to a

modification of the **CUSC** in respect of the **Charging Methodologies**, which may only take effect from 1 April of any given year **unless otherwise directed by the Authority in accordance with Paragraphs 8.23.9, 8.23.12 and 8.23.13 following consultation with the Panel.**

I also question the suggestion that a definition of "Directions" is added as set out in SLC C10 of the licence as there can be multiple directions from the Authority which can further detract from providing clarity to a user. For example the Authority can:

- Direct that a mod cannot be made as it's part of an SCR
- Direct a mod to progress/not progress a mod as Self-governance
- Direct a different implementation date
- Direct a mod to be implemented
- Direct a mod report to be resubmitted (send back)

If you wanted a definition of direction, we would need to have multiple definitions covering each scenario which would be substantive.

Kind regards,

**Steve Lam**

Commercial Analyst

UK Transmission

National Grid

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**From:** Abid Sheikh [<mailto:Abid.Sheikh@ofgem.gov.uk>]

**Sent:** Thursday, May 26, 2011 1:28 PM

**To:** garth.graham@sse.com

**Cc:** Thomason, Alex; Virk, Bali; Clark, Emma; Sutton, Esther; Jonathan Dixon; Peter Bolitho; steven.eyre@edfenergy.com; Lam, Steven; stuart.cotten@draxpower.com

**Subject:** RE: CMP195 Draft Workgroup Consultation

**Importance:** High

Garth,

Many thanks for your comments. Our response to the points you've raised are as follows:

In relation to your first point, we consider that "the timetable for the licensee to comply with the Authority's direction" may include potential implementation dates. In fact, these may - in some cases - be crucial to give effect to modifications in line with SCR conclusions. We note that the licence, in referring to "timetable", and our CGR Final Proposals do not limit the "timetable" to simply the date when a licensee must raise a modification in any way. Further, paragraph 1.36 of Appendix 1 to our CGR Final Proposals, states

that the obligation in the licence to raise and facilitate consultations on a modification(s) in response to an SCR direction would be generic in form. In particular, relevant licensees would be obliged within a specified period of time, via a direction issued by the Authority, to develop and consult on modifications that give practical effect to the matters set out in the SCR related direction.

In relation to your second point, we agree that it would be useful to consult the Panel on potential implementation dates. Therefore, we suggest that wording is tweaked as follows:

8.28.3 A modification of the **CUSC** shall take effect from the time and date specified in the direction, or other approval, from the **Authority** referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) **Business Days** after the date of such direction, or other approval, from the **Authority** except in relation to a modification of the **CUSC** in respect of the **Charging Methodologies**, which may only take effect from 1 April of any given year **unless otherwise directed by the Authority following consultation with the Panel.**

In relation to your third point, that the argument only relates to SCR directions and the ability to change the implementation of the (SCR) modification, we disagree. We also noted that the Authority may require revised implementation dates and also may send back a modification report on the basis it is deficient and require new implementation dates. This would also impact the provision relating to implementation of charging modification proposals under paragraph 8.28.3. Therefore, we consider that the first part of this paragraph should be amended to resolve this conflict for licence compliance purposes as set out above.

Kind regards

Abid

**Abid Sheikh**

Manager Industry Codes  
Licensing and Industry Codes  
107 West Regent Street  
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Tel: 0141 331 6011  
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**From:** garth.graham@sse.com [<mailto:garth.graham@sse.com>]

**Sent:** 26 May 2011 11:03

**To:** Abid Sheikh

**Cc:** Thomason, Alex; Virk, Bali; Clark, Emma; Sutton, Esther; Jonathan Dixon; Peter Bolitho; steven.eyre@edfenergy.com; Lam, Steven; stuart.cotten@draxpower.com

**Subject:** RE: CMP195 Draft Workgroup Consultation

Abid,

Having looked through the comments I'm broadly content for them to go out to wider industry consultation. However, I do have specific comments on two paragraphs:-

8.25.14

I think the 'Jess1' suggested addition on "Materially Affected Party" is appropriate and it should also be added to the last sentence of the paragraph.

8.28.3

I have three comments.

First, in looking at the definition of "directions" in C10 (15) of the Transmission Licence I cannot see it referring to "including the implementation of the modification" (as suggested at the bottom of page 2 of your colleagues' note). The definition in C10(15) that your colleague refer to, at (i), indicated that the direction contains "instructions to the licensee to make ...a modification proposal" and the goes on, in (ii), "the timetable for the licensee to comply with the Authority's direction".

I take this to mean that the Authority direction (at the conclusion of the SCR) sets out that the licensee shall raise (i.e. 'make') the directed Modification and the timetable it has to do this raising ('making') of the modification. Given that the timetable (a) to progress a Modification through the code change process and (b) to implementation the Modification are both outwith the vires of the Licensee to determine / set (as this power reside with the Panel, subject, for example, to Authority veto on going beyond the prescribed time etc.) then I cannot see how the Authority could issue (or the licensee accept) a direction "including the implementation [timetable] of the modification".

Given this I do not think that your colleagues suggested wording at the end of 8.28.3 should be included in CMP195.

However, notwithstanding my first comment, if my interpretation above is incorrect then my two other comments below apply.

Second, I think we should consider inclusion of some words to allow for the Authority consulting the Panel on any revised Charging Modification implementation date (and the Panel consulting industry and, if necessary, re-voting) that differ from 1st April. I'm concerned that without this advice (and re-vote, if appropriate) from the Panel (and industry) that the Authority could act, in retrospect, in an unreasonable manner in choosing an implementation date which is impractical / impossible for CUSC Parties to achieve or which, if the Panel was aware of this revised implementation date, might have affected (invalidated?) the outcome of the Panel vote.

Third, the suggested 'caveat' "unless otherwise directed by the Authority" should itself be caveated along the following line "unless, with respect to a SCR directed Modification Proposal, otherwise directed by the Authority". The argument put forward by your colleague at the bottom of page 2 / top of page 3 only refers (relates?) to SCR directions and the ability to change the implementation of the (SCR) modification. Without my suggested addition then it implies that the Authority could direct an alteration to the implementation date for any (non SCR and SCR) Charging modification.

Regards



Garth

From: "Abid Sheikh" <Abid.Sheikh@ofgem.gov.uk>

To: "Lam, Steven" <steven.lam@uk.ngrid.com>, <garth.graham@sse.com>, "Peter Bolitho" <Peter.Bolitho@eon-uk.com>, <steven.eyre@edfenergy.com>, <stuart.cotten@draxpower.com>, "Thomason, Alex" <alex.thomason@uk.ngrid.com>, "Sutton, Esther" <Esther.Sutton@eon-uk.com>

Cc: "Clark, Emma" <emma.clark@uk.ngrid.com>, "Virk, Bali" <bali.virk@uk.ngrid.com>, "Jonathan Dixon" <Jonathan.Dixon@ofgem.gov.uk>

Date: 25/05/2011 18:03

Subject: RE: CMP195 Draft Workgroup Consultation

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Hi Steve,

Here are some further suggested comments from Ofgem. They are generally minor corrections to some of the existing text to add clarity. We have also suggested an additional definition in Section 11 (of Directions) to distinguish SCR Directions from other kinds of direction that could be made in the CUSC – the note explains this in full.

I've copied the note to the WG members to allow for a quick turn-around on these comments as I'm aware that you would like to get the WG consultation out on Friday.

Regards

Abid

**Abid Sheikh**

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### WACM 1

The draft legal text for WACM 1 is shown below:

- 8.28.3 A modification of the **CUSC** shall take effect from the time and date specified in the direction, or other approval, from the **Authority** referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) **Business Days** after the date of such direction, or other approval, from the **Authority** except in relation to a modification of the **CUSC** in respect of the **Charging Methodologies**, which may only take effect from 1 April of any given year unless otherwise directed by the **Authority** in accordance with Paragraphs 8.23.9, 8.23.12 or 8.23.13 following consultation with the **Panel**.
- 8.23.9.1 Where the **Proposed Implementation Date** included in a **CUSC Modification Report** is a **Fixed Proposed Implementation Date** and the **Authority** considers that the **Fixed Proposed Implementation Date** (a) is or may no longer be appropriate because of exceptional circumstances; or (b) might otherwise prevent the **Authority** from making such decision by reason of the effluxion of time the **Authority** may direct the **CUSC Modifications Panel** to recommend a revised **Proposed Implementation Date**.

### WACM 2

The draft legal text for WACM 2 is shown below:

- 8.28.3 A modification of the **CUSC** shall take effect from the time and date specified in the direction, or other approval, from the **Authority** referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) **Business Days** after the date of such direction, or other approval, from the **Authority** except in relation to a modification of the **CUSC** in respect of the **Charging Methodologies**, which may only take effect from 1 April of any given year unless otherwise directed by the **Authority** in accordance with Paragraphs 8.23.9, 8.23.12, 8.23.13 or 8.28.3A following consultation with the **Panel**.
- 8.28.3A Where the **Authority** considers that taking into account the complexity, importance and urgency of the modification exceptional circumstances apply the **Authority** may, having set out in writing its reasons for this, direct a modification of the **CUSC** in respect of the **Charging Methodologies** to take effect from a date other than 1 April.

## WACM 3

The draft legal text for WACM 3 is shown below:

A modification of the **CUSC** shall take effect from the time and date specified in the direction, or other approval, from the **Authority** referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) **Business Days** after the date of such direction, or other approval, from the **Authority** except in relation to a modification of the **CUSC** in respect of the **Charging Methodologies**, which may only take effect from 1 April of any given year unless otherwise directed by the **Authority** in accordance with Paragraphs 8.23.9, 8.23.12, 8.23.13 or 8.28.3A

8.28.3A Revision to **Proposed Implementation Date** in respect of a modification of the **CUSC** in respect of the **Charging Methodologies**

8.28.3A.1 Where the **Authority** considers that taking into account the complexity, importance and urgency of the modification exceptional circumstances apply the **Authority** may direct the **CUSC Modifications Panel** to recommend a revised **Proposed Implementation Date** in respect of a modification of the **CUSC** in respect of the **Charging Methodologies**.

8.28.3A.2 Such direction may:

- (a) specify that the revised **Proposed Implementation Date** shall be other than the 1 April;
- (b) specify a reasonable period (taking into account a reasonable period for consultation) within which the **CUSC Modifications Panel** shall be requested to submit its recommendation; and
- (c) provide such reasons as the **Authority** deems appropriate for such request (and in respect of those matters referred to in Paragraphs 8.28.3.2A(a) and (b) above).

8.28.3A.3 Before making a recommendation to the **Authority**, the **CUSC Modifications Panel** will consult on the revised **Proposed Implementation Date**, and may in addition consult on any matters relating to the **CUSC Modification Report** which in the **CUSC Modifications Panel**'s opinion have materially changed since the **CUSC Modification Report** was submitted to the **Authority** and where it does so the **CUSC Modifications Panel** shall report on such matters as part of its recommendation under **CUSC** Paragraph 8.28.3A.4, with:

- (a) **CUSC Parties**; and
- (b) such other persons who may properly be considered to have an appropriate interest in it.

Such consultation will be undertaken in accordance with **CUSC** Paragraphs 8.22.3 and 8.22.6.

8.28.3A.4 Following the completion of the consultation held pursuant to **CUSC** Paragraph 8.28.3A.3 the **CUSC Modifications Panel** shall report to the

**Authority** with copies of all the consultation responses and recommending a **Revised Proposed Implementation Date**.

8.28.3A.5 The **Authority** shall notify the **CUSC Modifications Panel** as to whether or not it intends to accept the **Revised Proposed Implementation Date**. The **Authority** is under no obligation to accept the **Revised Proposed Implementation Date** and may, having set out in writing its reasons for this, direct an alternative revised **Proposed Implementation Date**, and where the **Authority** notifies the **CUSC Modifications Panel** that it intends to accept the **Revised Proposed Implementation Date** or directs an alternative revised **Proposed Implementation Date**, the **Revised Proposed Implementation Date** or alternative revised **Proposed Implementation Date** as directed by the **Authority** shall be deemed to be the **Proposed Implementation Date** as specified in the **CUSC Modification Report**.

#### Section 11

"Revised Proposed Implementation Date"	the revision to a <b>Fixed Proposed Implementation Date</b> recommended to the <b>Authority</b> by the <b>CUSC Modifications Panel</b> pursuant to <b>CUSC Paragraph 8.23.9.4 or 8.28.3A.4</b> ;
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## Annex 7 – Workgroup Consultation Responses

This section contains the 6 responses to the Workgroup Consultation

## CUSC Workgroup Consultation Response Proforma

### CMP195 – Code Governance Review Post Implementation Clarifications

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

Please send your responses by **01 July 2011** to [cusc.team@uk.ngrid.com](mailto:cusc.team@uk.ngrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Steve Lam at [Steven.lam@uk.ngrid.com](mailto:Steven.lam@uk.ngrid.com).

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

<b>Respondent:</b>	Stuart Cotten (01757 612 751)
<b>Company Name:</b>	Drax Power Limited
<b>Please express your views regarding the Workgroup Consultation, including rationale.</b> <b>(Please include any issues, suggestions or queries)</b>	<p>Drax is reasonably comfortable with the changes set out in CMP195, except for one key area. Drax currently believes that the proposal to modify paragraph 8.28.3 could be detrimental to the Applicable CUSC Objectives. Please see our answer to Question 1 for further details (below).</p> <p>Drax believes that the amendment to paragraph 8.28.3 should be removed unless there is a compelling case to include it in a “code tidying” modification.</p>
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p>Drax believes that the majority of CMP195 will provide a marginal benefit under Applicable CUSC Objective (a) by providing greater clarity to Section 8 and 11 of the CUSC, thereby promoting the efficient operation of the modification procedures.</p> <p>However, amending paragraph 8.28.3 may introduce ambiguity regarding the dates on which modifications to the Charging Methodologies take effect, which will cause greater regulatory uncertainty for market participants and make the process for modifying the Charging Methodologies less efficient.</p> <p>In addition, the suggested amendments to paragraph 8.28.3 may have a negative commercial impact on those parties that contract in the wholesale market should the Authority determine a mid-year implementation date for a change to the Charging</p>

	Methodologies.
<b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b>	Yes. The proposed implementation approach appears sensible.
<b>Do you have any other comments?</b>	Please see answer to Question 1 in the specific questions section (below).
<b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b>	No.

**Specific questions for CMP195**

<b>Q</b>	<b>Question</b>	<b>Response</b>
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1	<p><b>Please state your views and preference on the proposed options on the legal text in relation to paragraph 8.28.3</b></p>	<p>Drax is concerned over the proposal to modify paragraph 8.28.3. At present, this paragraph is the only reference to the date on which modifications to the Charging Methodologies are to take effect, i.e. 1 April.</p> <p>There was significant discussion surrounding the implementation dates of Charging Methodologies as a part of the Code Governance Review work-stream. Industry parties expressed significant concern surrounding the ability to implement changes to the Charging Methodologies at any time other than the start of a given charging year. This is due to the commercial implications of changing the underlying costs, upon which trades have been transacted, part-way through a Charging Year.</p> <p>The proposed change to 8.28.3 under this modification suggests that the 1 April date may change on direction of the Authority to an alternative date. However, the current (baseline) version of paragraph 8.28.3 specifically states that the changes to the Charging Methodologies can only take effect from 1 April. Paragraph 8.28.3 currently states:</p> <p><i>“A modification of the CUSC shall take effect from the time and date specified in the direction, or other approval, from the Authority referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) Business Days after the date of such direction, or other approval, from the Authority except in relation to a modification of the CUSC in respect of the Charging Methodologies, which may only take effect from 1 April of any given year.”</i></p> <p>Drax does not believe that an addition to paragraph 8.28.3, as suggested in the consultation document, would be conducive to achieving the Applicable Code Objectives, as it would lead to ambiguity over the date on which changes to the Charging Methodologies would take effect.</p> <p>Ofgem have indicated that the Authority currently has the powers to amend, in exceptional circumstances, the date on which changes to the Charging Methodologies should take effect. Drax believes that the Authority should use its current powers to make such changes, rather than adding new text that suggests the creation of an additional route to modify the Charging Methodologies implementation timetable.</p> <p>CMP195 was raised as a “code tidying” modification. It does not seem appropriate to modify the process for setting the date on which the Charging Methodologies should take effect via CMP195. If Ofgem does not believe that the Authority has existing powers to amend the Charging Methodologies implementation timetable, then this matter should be addressed via a forum where such change is more widely consulted upon. On that basis, Drax does not support any of the four options provided in the consultation document. Paragraph 8.28.3 should remain as it stands under the current baseline.</p>
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### CMP195 – Code Governance Review Post Implementation Clarifications

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

Please send your responses by **01 July 2011** to [cusc.team@uk.ngrid.com](mailto:cusc.team@uk.ngrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Steve Lam at [Steven.lam@uk.ngrid.com](mailto:Steven.lam@uk.ngrid.com).

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

<b>Respondent:</b>	<i>Esther Sutton</i>
<b>Company Name:</b>	<i>E.ON UK</i>
<p><b>Please express your views regarding the Workgroup Consultation, including rationale.</b></p> <p><b>(Please include any issues, suggestions or queries)</b></p>	<p>It is perhaps to some extent unsurprising given the extent of the changes, but unfortunate that further to the work undertaken for CAPs 183, 184, 185 and 188, plus CAPs 186 and 187, for which industry was consulted on the Section 8 and Section 11 legal text as agreed between the Group, Code Administrator and Ofgem, that potential problems albeit mostly housekeeping errors with the legal text have been identified, further to implementation of these modifications.</p> <p>It is more regrettable that potentially non-material issues have been highlighted via several iterations of comments; however as non-material changes have been identified we appreciate that CMP195 is following the standard rather than self-governance process.</p> <p>We are satisfied with the agreed changes from the Group's page turning exercises following Ofgem's comments of 12/10/10 and 02/03/11 (and GSG points from 19/01/11). The further 'generally minor corrections to the existing text' received from Ofgem on 25/05/11 do however raise our concern regarding the suggested rewording of Section 8 v1.19 8.28.3. The current wording is as Ofgem previously suggested 02/03/11 and included in Appendix 1 to CMP195, but we do not believe that the changes now suggested are within scope of CMP195. We believe that as suggested in the Workgroup, as extensive debate over the implementation date for Charging proposals took place in Code Governance Review workshops, it would not be appropriate to change 8.28.3 in a way that potentially opens up the 01 April</p>

	<p>date. Fundamentally we are not convinced that the Transmission Licence condition C10 6 (c) which refers to the requirement 'for that timetable to be extended with the consent of or as required by the Authority' facilitates the direction of implementation dates for any modification. Thus as the Proposer agreed for amalgamation, this change is out of scope due to being more than a housekeeping change and not having been agreed in the original Code Governance Review Proposals or stated in the licence conditions. CMP195 was raised as a code tidying modification and some of the rewording suggested would go beyond this.</p>
<p><b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b></p>	<p><i>For reference, the Applicable CUSC Objectives are:</i></p> <p><i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i></p> <p><i>(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.</i></p> <p>The various minor, housekeeping, clarifications such as those to 8.16.1, 8.20 etc. are in themselves beneficial and in clarifying the CUSC can be said to better facilitate both Applicable Objectives (a) and (b). However the changes suggested to 8.23.8 which could have major negative impacts on parties do not, and this would outweigh the minor positive corrections to the text. Thus on balance we would not support CMP195 if it incorporates any change to 8.23.8 as it stands.</p>

<p><b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b></p>	<p>Yes.</p>
<p><b>Do you have any other comments?</b></p>	<p>No.</p>
<p><b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b></p>	<p>No.</p>

## Specific questions for CMP195

Q	Question	Response
1	<b>Please state your views and preference on the proposed options on the legal text in relation to paragraph 8.28.3</b>	<p>We believe that if 8.28.3 requires any clarification this should be considered under a separate modification where the Workgroup could revisit the Code Governance Review discussions and fully explore the agreed meaning of the Licence condition and current and any suggested legal text wording. If an alteration was justified, changing 8.28.3 in line with Option 4 would be the only option that appears acceptable to us. It would seem to clarify the paragraphs under which the Authority can make a direction while making it clear that Charging Methodology changes will always be from the 1<sup>st</sup> of April – this is what industry expected from the Code Governance Review and if this is not to be the case this would deserve further consultation under a separate modification. Option 3 appears unacceptable; unclear with relation to Charging Methodologies. Option 1 acknowledges the requirement for consultation with the Panel but unacceptable in opening up the Charging Methodology implementation date (and without any reassurance that 01 April would always be the target and any changes only made in consultation with industry and the Panel in extreme situations, etc). Option 2 is the least acceptable for not only opening up the Charging Methodology implementation date but requiring anyone reading the text to go through the whole of Section 8 before they could fully understand 8.28.3. Due to the confusion over the Licence condition and need and subtleties to adjusting the legal text, if parties believe that a change is required we would maintain that no change should be made to the legal text for 8.28.3 as it stands in CMP195 but addressed separately.</p>

## CUSC Workgroup Consultation Response Proforma

### CMP195 – Code Governance Review Post Implementation Clarifications

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

Please send your responses by **01 July 2011** to [cusc.team@uk.ngrid.com](mailto:cusc.team@uk.ngrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Steve Lam at [Steven.lam@uk.ngrid.com](mailto:Steven.lam@uk.ngrid.com).

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

<b>Respondent:</b>	<i>Steven Eyre</i>
<b>Company Name:</b>	<i>EDF Energy</i>
<b>Please express your views regarding the Workgroup Consultation, including rationale.  (Please include any issues, suggestions or queries)</b>	<p>We believe that subject to the comments below the consultation and the Workgroup deliberations have appropriately addressed the comments received by Ofgem in respect of the Code Governance modifications implemented at the end of 2010.</p> <p>Apart from the legal text issue addressed at the end of this questionnaire, we would like to comment on the issue described at paragraph 4.9. We do not support the view expressed by Ofgem that an SCR direction could realistically include an implementation date. As part of the Code Governance Review, Ofgem made it clear that any modification proposals raised as a result of an SCR direction would follow the standard code modification process. It is during the progression of the proposal through the code governance process where a potential implementation date will be considered and consulted upon. We would not support any moves to alter this process.</p>
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p>We consider that the original proposal better facilitates the Applicable CUSC Objectives in respect of objective (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence. The proposal provides greater clarity to the modification procedures and should therefore allow for more efficient operation of the procedures by the Code Administrator. We consider the proposal in neutral in respect of objective (b).</p>

	We note that there are no alternatives proposed.
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<b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b>	<i>Yes.</i>
<b>Do you have any other comments?</b>	<i>No</i>
<b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b>	<i>No</i>

#### Specific questions for CMP195

<b>Q</b>	<b>Question</b>	<b>Response</b>
1	<b>Please state your views and preference on the proposed options on the legal text in relation to paragraph 8.28.3</b>	<p>The intention of this modification is to provide greater clarity and certainty to the modification procedures and not to introduce new rights or obligations. It would appear that under certain provisions under Section 8 Ofgem currently has the ability to amend modification implementation dates including those in relation to charging methodologies. CMP195 should not in anyway alter these rights but simply clarify their existence. Consequently, it would appear that option 1, 2 and 3 in effect adequately achieve this aim.</p> <p>Whilst we fully support the principle that charging methodology modifications should be implemented on the 1 April in any given year, it does appear, and this is highlighted in the reference to Annex 6 of CAP188 final report, that Ofgem are able to change the date in exceptional circumstances under CAP179 and the “Send back power”. Therefore this proposal should not be seeking to remove any existing rights in this respect. It would appear that Option 4 does do this and is therefore arguably outside the scope of this modification.</p>

## CUSC Workgroup Consultation Response Proforma

### CMP195 – Code Governance Review Post Implementation Clarifications

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

Please send your responses by **01 July 2011** to [cusc.team@uk.ngrid.com](mailto:cusc.team@uk.ngrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Steve Lam at [Steven.lam@uk.ngrid.com](mailto:Steven.lam@uk.ngrid.com).

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

<b>Respondent:</b>	Steven Lam
<b>Company Name:</b>	National Grid Electricity Transmission Plc
<b>Please express your views regarding the Workgroup Consultation, including rationale.  (Please include any issues, suggestions or queries)</b>	As Proposer, National Grid is supportive of the changes proposed within CMP195
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p><i>For reference, the Applicable CUSC Objectives are:</i></p> <p><i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i></p> <p><i>(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.</i></p> <p>National Grid believes that CMP195 will better facilitate Applicable CUSC Objective (a) by providing greater clarity to Sections 8 &amp; 11 of the CUSC which will allow more efficient operation of the modification procedures, as stated in paragraph 7.1 of the Workgroup Consultation</p> <p>National Grid also believe that this will marginally better facilitate Applicable CUSC Objective (b) as it will enhance small industry participants' understanding of the modification procedures and therefore facilitate effective competition.</p>

<b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b>	Yes. National Grid believes that the proposed implementation date of 10 Working Days after Authority determination is appropriate.
<b>Do you have any other comments?</b>	Please see below
<b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b>	Yes, please see the attached Workgroup Consultation Alternative Request Form.

## Specific questions for CMP195

Q	Question	Response
1	<p><b>Please state your views and preference on the proposed options on the legal text in relation to paragraph 8.28.3</b></p>	<p>National Grid notes that on 25 May 2011, Ofgem emailed to the Workgroup a further set of comments which was debated via teleconference by the Workgroup on 07 June 2011.</p> <p>With regard to paragraph 8.28.3 Ofgem proposed that for Charging modifications to the CUSC, the implementation date can change from the 1 April in exceptional circumstances under a direction from the Authority.</p> <p>National Grid understands the concerns from the Workgroup that there may be commercial implications from a different implementation date being directed by the Authority, resulting in a mid-year tariff change. However, we believe that the original intention of CAP188 (Governance of Charging Methodologies) was to allow the Authority to direct a different implementation date under exceptional circumstances as set out in the CAP188 Final Amendment Report. The wording for the implemented Working Group Alternative Amendment (WGAA) has been reproduced below from the CAP188 final Amendment Report:</p> <p><b>Working Group Alternative Amendment</b></p> <p><i>Under the WGAA, there would be no fixed cut-off date for approving charging methodology Amendment Proposals for implementation from the following charging year.</i></p> <p><i>In order to provide certainty, a standard fixed implementation date of 1st April would apply to all Amendment Proposals to the Charging Methodologies. However, an alternative Implementation Date could be directed by the Authority, if exceptional circumstances applied.</i></p> <p>National Grid notes that the full intent of the CAP188 WGAA was not implemented within the legal text implemented with the Code Governance Review proposals. This was an oversight due to the high volume of text changes related to the Code Governance Review suite of proposals in progress at that time.</p> <p>National Grid considers that under the options proposed within the Workgroup Consultation for CMP195, option 1 and 2 only partially addresses the issue raised by Ofgem as the proposed drafting does not specifically allow the Authority to direct a different implementation date in exceptional circumstances. Paragraph 8.23.9 only allows the Authority to direct a different implementation date where a modification may “time out” before a decision has been reached by the Authority or where they feel that an implementation date may no longer be</p>



Q	Question	Response
		<p>appropriate. There is no specific clause which references exceptional circumstances.</p> <p>National Grid believes that the text in all 4 options and the baseline text do not fully reflect the original intention of CAP188 WGAA. We therefore propose a Workgroup Alternative Consultation Request which aims to replicate CMP195 original but include additional wording which allows the Authority to direct a different implementation date from the 1 April of any given year in relation to charging methodology modification proposals.</p> <p>We consider that the proposed alternative remains within the scope of CMP195 original as the aim of the original proposal is to provide clarification to the Code Governance Review. As CAP188 was part of the suite of modifications implemented by Ofgem in December 2010, we believe that the proposed alternative addresses the original intention of CAP188 WGAA.</p>

# CUSC WORKGROUP CONSULTATION ALTERNATIVE REQUEST FORM

Please send your completed form along with your completed Workgroup Consultation Response to [cusc.team@uk.ngrid.com](mailto:cusc.team@uk.ngrid.com)

Please note that any responses received after the deadline may not receive due consideration by the Workgroup.

<b>Respondent Name and contact details</b>	Steven Lam
<b>CMP195 – Code Governance Review Post Implementation Clarifications</b>	
<b>Capacity in which the WG Consultation Alternative Request is being raised :</b> (i.e. CUSC Party, BSC Party or “National Consumer Council ”)	CUSC Party
<p><b>Description of the Proposal for the Workgroup to consider</b> <i>(mandatory by proposer):</i></p> <p>This proposed Workgroup Consultation Alternative Request aims to replicate the original CMP195 proposal but adds an additional element in relation to the implementation date for charging methodology proposals.</p> <p>This will allow the Authority to direct an implementation date which is different from the 1 April of any given year, only in exceptional circumstances.</p> <p>The proposed change can be found in the attached proposed legal text.</p>	
<p><b>Description of the difference(s) between your proposal compared to Original / Workgroup Alternative(s)</b> <i>(mandatory by proposer):</i></p> <p>The original proposal as detailed in the Workgroup consultation provides 4 options in relation to paragraph 8.28.3 of Section 8 in the CUSC. These are briefly summarised below:</p> <p>Option 1: allow the Authority to direct a different implementation date pursuant to specific paragraphs within the CUSC</p> <p>Option 2: allow the Authority to direct a different implementation date for charging methodology proposals in accordance with the procedures set out in the whole of Section 8 of the CUSC</p> <p>Option 3: allow the Authority to direct the Panel to amend the implementation date for charging methodology changes</p> <p>Option 4: allow the Authority to direct a different implementation date for all modification proposals other than those which are modifications to the charging methodologies.</p> <p>This Workgroup Consultation Alternative Request proposes an additional solution whereby the Authority can only direct a different implementation date for charging methodology changes in exceptional circumstances. This is not covered within the baseline legal text or the options proposed within the Workgroup Consultation.</p>	

**Justification for the proposal (*including why the Original proposal / Workgroup Alternative(s) does not address the defect*) (mandatory by proposer):**

The original intention of CAP188 (Code Governance review: Governance of Charging Methodologies) was to allow the Authority in exceptional circumstances to direct a change to the implementation date which could be different to 1 April in any given year. This was to cover situations where the 1 April may not be practical, as referenced within paragraph 4.29 of the CAP188 Final Amendment Report:

*The Ofgem representative expressed a concern over making the CUSC overly prescriptive in this area. The Working Group discussed that the existing CUSC provisions which enable the Authority to set Implementation Dates in its Direction to the Company to implement an Amendment Proposal, taking into account the Panel's proposed Implementation Date. The Panel could provide reasons within its final report as to why the Authority should direct a mid-year Implementation Date, if one were required to take account of exceptional circumstances. The Report would also reflect wider industry views and consultation responses on such exceptional circumstances. The full detail of the WGAA is contained within Annex 6 of this report.*

The Working Group Alternative Amendment for CAP188 has been set out below:

*Under the WGAA, there would be no fixed cut-off date for approving charging methodology Amendment Proposals for implementation from the following charging year.*

*In order to provide certainty, a standard fixed implementation date of 1st April would apply to all Amendment Proposals to the Charging Methodologies. **However, an alternative Implementation Date could be directed by the Authority, if exceptional circumstances applied.***

The full Final Amendment Report for CAP188 can be found on the following Link:

<http://www.nationalgrid.com/NR/rdonlyres/5E0F6F21-5B49-48E8-8510-F3A8254E4739/43980/CAP188FinalAmendmentReport10.pdf>

Under the options proposed within the Workgroup Consultation for CMP195, Option 1 and 2 only partially addresses the issue raised by Ofgem as the proposed drafting does not specifically allow the Authority to direct a different implementation date in exceptional circumstances. Paragraph 8.23.9 only allows the Authority to direct a different implementation date where a modification may "time out" before a decision has been reached by the Authority or where they feel that an implementation date may no longer be appropriate. There is no specific clause which references exceptional circumstances. Option 3 is a variation upon Option 1 which allows the Authority to direct the Panel to recommend a different implementation date, but is linked to specific paragraphs within Section 8 of the CUSC.

Finally, we believe that Option 4 conflicts with the intention of CAP188 WGAA therefore, this alternative has been raised as the full intent of the CAP188 WGAA was not implemented within the legal text for the Code Governance Review proposals. This was an oversight due to the high volume of legal text changes in progress at that time. As the purpose of CMP195 original is to provide clarity to the changes implemented for the Code Governance Review, we believe that this proposed alternative remains in scope.

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

Changes will be required to Section 8 of the CUSC

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

None

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

None

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

We believe that this will better facilitate Applicable CUSC Objective (a) by providing greater clarity to the modification procedures and so efficiently carrying out the obligations imposed by the Transmission Licence.

This also addresses the full intent of the implemented CAP188 WGAA with respect to charging implementation dates and therefore provides greater clarity to the processes and procedures, which better facilitates Applicable Objective (a).

**Attachments (Yes/No):**

**If Yes, Title and No. of pages of each Attachment:**

Yes: Workgroup Alternative: Proposed Legal Text

**Notes:**

1. 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 Modification.

## Workgroup Alternative: Proposed Legal Text

- 8.28.3 Subject to Paragraph 8.28.3A a A modification of the **CUSC** shall take effect from the time and date specified in the direction, or other approval, from the **Authority** referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) **Business Days** after the date of such direction, or other approval, from the **Authority**, except in relation to a modification of the **CUSC** in respect of the **Charging Methodologies**, which may only take effect from 1 April of any given year unless otherwise directed by the Authority in accordance with Paragraphs 8.23.9, 8.23.12, and 8.23.13 and 8.28.3A following consultation with the Panel.
- 8.23.3A Where the **Authority** considers that taking into account the complexity, importance and urgency of the modification exceptional circumstances apply the **Authority** may, having set out in writing its reasons for this, direct a modification of the **CUSC** in respect of the **Charging Methodologies** to take effect from a date other than 1 April.

## CUSC Workgroup Consultation Response Proforma

### CMP195 – Code Governance Review Post Implementation Clarifications

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

Please send your responses by **01 July 2011** to [cusc.team@uk.ngrid.com](mailto:cusc.team@uk.ngrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Steve Lam at [Steven.lam@uk.ngrid.com](mailto:Steven.lam@uk.ngrid.com).

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

<b>Respondent:</b>	<i>Gary Henderson. 01355814808. electricityspoc@scottishpower.com</i>
<b>Company Name:</b>	<i>IBM UK Ltd for and on behalf of ScottishPower.</i>
<b>Please express your views regarding the Workgroup Consultation, including rationale.  (Please include any issues, suggestions or queries)</b>	<i>We are supportive of this change as it tidy's up a number of minor inconsistencies and housekeeping changes.</i>
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<i>By making the CUSC clearer and devoid of inconsistency and error, we make the administration for National Grid and all Parties easier and surer, bettering efficiency and competition.</i>

<b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b>	<i>Yes</i>
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<b>Do you have any other comments?</b>	<i>No</i>
<b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b>	<i>No</i>

**Specific questions for CMP195**

<b>Q</b>	<b>Question</b>	<b>Response</b>
1	<b>Please state your views and preference on the proposed options on the legal text in relation to paragraph 8.28.3</b>	Our preference with relation to the legal text is Option 4. It is our opinion that modifications relating to the Charging Methodologies should follow a fixed timetable for assessment and implementation. We note that in the CAP188 original and alternative amendments, and the associated Authority decision letter, a key principle stated was that these changes follow a fixed implementation timetable, and our reading of the four options is that only Option 4 specifically preserves that principle. It is important that the industry enjoys as high a level of certainty as is possible, which is best served by Option 4.

## CUSC Workgroup Consultation Response Proforma

### CMP195 – Code Governance Review Post Implementation Clarifications

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

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Any queries on the content of the consultation should be addressed to Steve Lam at [Steven.lam@uk.ngrid.com](mailto:Steven.lam@uk.ngrid.com).

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

<b>Respondent:</b>	<i>Garth Graham (01738 456000)</i>
<b>Company Name:</b>	Scottish and Southern Energy, Southern Electric, Airtricity Developments (Scotland) Limited, Airtricity Developments (UK) Limited, Clyde Wind Farm (Scotland) Limited, Greenock Wind Farm (Scotland) Limited, Griffin Wind Farm Limited, Keadby Developments Limited, Keadby Generation Limited, Medway Power Limited, Slough Energy Supplies Limited, SSE (Ireland) Limited, SSE Energy Limited and SSE Generation Limited.
<b>Please express your views regarding the Workgroup Consultation, including rationale.  (Please include any issues, suggestions or queries)</b>	
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p><i>For reference, the Applicable CUSC Objectives are:</i></p> <p><i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i></p> <p><i>(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.</i></p> <p>We note the comments in the Proposal and as set out in Section 7 of the consultation document and we concur with the stated views; namely that CMP195 does better achieve applicable CUSC objective (a) for the reasons summarised in paragraphs 7.3 and 7.4 (and is neutral on (b).</p>



<p><b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b></p>	<p>We support the proposed implementation approach of ten Working Days after an Authority Decision as set out in Section 6 of the consultation document.</p>
<p><b>Do you have any other comments?</b></p>	<p>We note the additional Ofgem comments set out in paragraphs 4.6 to 4.8 of the consultation document. It is regrettable that these comments could not have been forthcoming earlier to allow the Panel to consider them when deliberating on (i) the CMP195 Workgroup Terms of Reference and (ii) the associated timetable.</p> <p>In respect of the separate issue regarding the Authority's Significant Code Review directions; as detailed in paragraphs 4.9 to 4.11, and explored in more detail in the emails shown in Appendix 5; our understanding of what the Authority intended to be the situation with SCR directions does not accord with what we understand the Ofgem position currently to be. This mismatch between what we believe to be the widely understood position on this matter by stakeholders compared with Ofgem's understanding is a matter of concern. Given the inherent materiality of SCR type changes a more robust examination of the current Ofgem position would be helpful for all concerned.</p>
<p><b>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</b></p>	<p>No. We do not wish to raise a WG Consultation Alternative Request.</p>

**Specific questions for CMP195**

Q	Question	Response
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Q	Question	Response
1	<p><b>Please state your views and preference on the proposed options on the legal text in relation to paragraph 8.28.3</b></p>	<p>Our preference is for Option 1. There are two reasons for this.</p> <p>First it clearly links the ability to change the implementation arrangements with the powers in 8.23.9 which allows for the Panel to reconsult stakeholders as well as revoke if the proposed change to the implementation date would be detrimental to the good of CUSC Parties. For the avoidance of doubt we do not believe an implementation date can (or should) be altered unilaterally by direction within stakeholders and the Panel having the ability to provide comments / views (and revoke if appropriate). This is especially the case with charging changes which could adversely affect end consumer charges.</p> <p>Second it is the Code Administrators proposed text and given their significant role in the development of the legal text changes for Section 8 associated, in particular, with these Code Governance Review changes we value their views in this regard.</p>

## Annex 8 - Code Administrator Consultation Responses

This section contains the 4 responses to the Code Administrator Consultation

**CMP195 – Code Governance Review Post Implementation Clarifications**

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

Please send your responses by **23 August 2011** to [cusc.team@uk.ngrid.com](mailto:cusc.team@uk.ngrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its recommendation to the Authority

Any queries on the content of the consultation should be addressed to Steve Lam at [Steven.lam@uk.ngrid.com](mailto:Steven.lam@uk.ngrid.com).

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

<b>Respondent:</b>	Stuart Cotten 01757 612 751
<b>Company Name:</b>	Drax Power Limited
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p>Drax considers that the original proposal and WACM 1 would both better facilitate the Applicable CUSC Objectives compared to the baseline, with WACM 1 being preferable over the original.</p> <p>Whilst the majority of the housekeeping changes proposed by CMP195 provide a benefit under Applicable CUSC Objective (a), in terms of providing greater clarity to Section 8 and 11 of the CUSC, the potential amendment of paragraph 8.28.3 may introduce ambiguity with regards to implementation dates for Charging Methodologies.</p> <p>Amending paragraph 8.28.3 to allow such changes to implementation dates may have a negative commercial impact on those parties that contract in the wholesale market should the Authority determine a new mid-year implementation date, i.e. a date other than 1<sup>st</sup> April that does not correspond with the charging year.</p> <p>Drax understands that there may be circumstances where a change to the implementation date is required, such as where an implementation date is no longer considered workable due to more time being required to make required changes to IT systems. However, the term “exceptional circumstances” is too broad, with the Workgroup being unable to provide examples of what could be considered as “exceptional”.</p> <p>Ofgem may “send back” a given modification where the timetable</p>

is unworkable under the current baseline; this is covered under paragraph 8.23.9 of the CUSC. WACM 1 clarifies the ability to make such changes to the implementation date where the implementation timetable is considered unworkable by making amendments to paragraphs 8.23.3 and 8.23.9 to that effect.

The advantage of WACM 1 over WACM 2 is that greater protection is afforded to industry parties by way of the associated consultation process. This will ensure that industry parties are able to indicate where an amendment to an implementation date for a Charging Methodology modification may have a detrimental effect on their business. This appears to be a pragmatic solution that provides all stakeholders with the reassurance they require. WACM 3 does not provide anything additional to WACM 1, but appears to deliver a similar solution in a less efficient way.

Views against the Applicable CUSC Objectives are summarised below.

#### Original

(a): Better meets the objective, as it provides greater clarity in a number of areas within sections 8 and 11 of the CUSC. This promotes the efficient operation of the code.

(b): Neutral.

#### WACM 1

(a): Better meets the objective, as with the original. However, WACM 1 provides additional clarity with regards to Charging Methodology implementation dates in the modification process. This alternative promotes the efficient operation of the code.

(b): Whilst the ability to modify Charging Methodology implementation dates is detrimental when compared to the baseline (and the original), this alternative provides individual parties with the ability to flag potential detrimental effects to competition via an industry consultation process. Overall, neutral.

#### WACM 2

(a): Better meets the objective, as it provides greater clarity in a number of areas within sections 8 and 11 of the CUSC. This promotes the efficient operation of the code.

(b): WACM 2 is detrimental to competition, as parties are not provided with an industry consultation with which to flag the effects of changing implementation dates on their business. This outweighs the benefits under objective (a).

#### WACM 3

(a): Better meets the objective, as it provides greater clarity in a number of areas within sections 8 and 11 of the CUSC.

	<p>However, adding further provisions to the CUSC that could be adequately covered via minor changes to the existing send back process under paragraph 8.23.9 (as delivered by WACM 1) appears inefficient.</p> <p>(b): This alternative does not add anything above WACM 1. Overall, neutral.</p>
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<b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b>	The proposed implementation approach appears sensible.
<b>Do you have any other comments?</b>	No.

**CMP195 – Code Governance Review Post Implementation Clarifications**

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

Please send your responses by **23 August 2011** to [cusc.team@uk.ngrid.com](mailto:cusc.team@uk.ngrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its recommendation to the Authority

Any queries on the content of the consultation should be addressed to Steve Lam at [Steven.lam@uk.ngrid.com](mailto:Steven.lam@uk.ngrid.com).

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

<b>Respondent:</b>	Steven Eyre Steven.eyre@edfenergy.com
<b>Company Name:</b>	EDF Energy
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p>We consider that the original proposal better facilitates the Applicable CUSC Objectives in respect of objective (a), the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence. The proposal provides greater clarity to the modification procedures, and should therefore allow for more efficient operation of the procedures by the Code Administrator. We consider the proposal is neutral in relation to objective (b). We believe that both WACM1 and WACM3 also better meet the applicable CUSC objectives, for the same reasons stated above in respect of the original proposal.</p> <p>The intention of this modification is to provide greater clarity and certainty to the modification procedures, and not to introduce new rights or obligations. It would appear that under certain provisions under Section 8, Ofgem currently has the ability to amend modification implementation dates, including those in relation to charging methodologies. CMP195 should not in any way alter these rights, but provide greater clarity where required. We believe that WACM1 meets this objective the best.</p> <p>We do not support WACM2, on the basis that it introduces an additional clause that is not required, as clause 8.23.9 already provides the ability for Ofgem to revise implementation dates. In addition, it also has the effect of removing any consultation with the industry as to what an appropriate revised implementation</p>

	date should be. We consider this does not better meet the applicable CUSC objective (b) when compared to the original or the other alternative proposals.
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<b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b>	Yes
<b>Do you have any other comments?</b>	No



## CUSC Code Administrator Consultation Response Proforma

### CMP195 – Code Governance Review Post Implementation Clarifications

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

Please send your responses by **23 August 2011** to [cusc.team@uk.ngrid.com](mailto:cusc.team@uk.ngrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its recommendation to the Authority

Any queries on the content of the consultation should be addressed to Steve Lam at [Steven.lam@uk.ngrid.com](mailto:Steven.lam@uk.ngrid.com).

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

<b>Respondent:</b>	<i>Gary Henderson. 01355814808. electricityspoc@scottishpower.com</i>
<b>Company Name:</b>	<i>IBM UK Ltd for and on behalf of ScottishPower.</i>
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<i>By making the CUSC clearer and devoid of inconsistency and error, we make the administration for National Grid and all Parties easier and surer, bettering efficiency and competition.</i>

<b>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</b>	<i>Yes</i>
<b>Do you have any other comments?</b>	<i>No</i>

**CMP195 – Code Governance Review Post Implementation Clarifications**

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

Please send your responses by **23 August 2011** to [cusc.team@uk.ngrid.com](mailto:cusc.team@uk.ngrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its recommendation to the Authority

Any queries on the content of the consultation should be addressed to Steve Lam at [Steven.lam@uk.ngrid.com](mailto:Steven.lam@uk.ngrid.com).

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

<b>Respondent:</b>	Esther Sutton <a href="mailto:esther.sutton@eon-uk.com">esther.sutton@eon-uk.com</a>
<b>Company Name:</b>	E.ON UK
<b>Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.</b>	<p><i>For reference, the Applicable CUSC Objectives are:</i></p> <p><i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i></p> <p><i>(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.</i></p> <p>Yes, for CMP195 Proposed Original only.</p> <p>No, for the WACMs.</p> <p>Our views have not changed significantly since the Workgroup consultation insofar as minor housekeeping, clarifications such as those to 8.16.1, 8.20, etc. are beneficial and by giving greater clarity and certainty to participants better facilitate both Applicable Objectives (a) and (b). However the changes suggested to 8.23.8 while they would clarify the Code could have negative impacts on parties.</p> <p>Thus we support CMP195 Proposed only.</p> <p>The changes to 8.23.9.1 proposed by WACM1 would not be objectionable if one accepted firstly that the flexibility to change implementation dates does/should exist for occasions other than timing out. Secondly that the text in 8.23.9, that states that the Authority may direct provision of a new implementation date when the original is judged inappropriate, would or should take</p>

precedence over the current text in 8.28.3 that stipulates a 01 April date for the introduction of any changes to Charging Methodologies.

The current Code could be viewed as ambiguous, and the ability to change this date might be desirable under exceptional circumstances and following consultation. Thus WACM1 would clarify the Code removing this ambiguity and making it clear that this flexibility does exist but could only be utilised under such exceptional circumstances and after consulting industry. However, as the Ofgem representative has acknowledged, 8.23.9 was only introduced for CAP179 and we do not recall the intention to introduce such flexibility under other circumstances as being part of CAP179. It seems possible that the CAP179 legal text wording of 8.23.9 might have unintentionally implied/allowed for implementation dates to be changed for reasons other than to prevent timing out. As the Ofgem representative in the CMP195 Workgroup believes that the current wording allows for changes to prevent timing out only, contra to the concerns of the rest of the Group over this paragraph, this adds to the impression that errors were made in introducing wording that some believe open to interpretation. If, as it would appear to us, this is an error in the CAP179 drafting of 8.23.9.1 it would be more appropriate to remove the wording *'is or may no longer be appropriate or'* from this paragraph, than to alter 8.28.3 in line with it.

The wording of the CAP188 final Report para 4.29 claims that the Working Group on 27/08/10 believed that the Code as it stood gave the Authority the ability to 'set implementation dates in its Direction'; if a mid-year date was required in exceptional circumstances. However again we cannot recall a clear view from the CAP188 Group that this power already existed, only a debate around the desirability or not of introducing such an option. Furthermore what clause this might be referring to if it already existed is not mentioned. Hence we believe paragraph 4.29 is misleading. The Code paragraph we are now referring to as 8.23.9 was only inserted for CAP179 on 27/01/11 after the CAP188 Workgroups had finished, and we believe is the only paragraph containing this provision being discussed under CMP195. (It is also not clear from the CAP188 Final Report if the mention of direction of an alternative implementation date in Annex 6 describing the CAP188 WGAA is intended to be a clarification of the existing situation or a power to be introduced by that WGAA; the wording in Annex 6 appears to suggest the latter but para 4.29 implies the former despite the lack of reference to any such relevant section of the Code that might provide said power. Clearly the CMP188 Working Group favoured the Original proposal to ensure certainty by 30/09 that no further changes would be suggested for the following 01/04,

	<p>and it is apparent that a standard fixed implementation date of 1st April was always expected to apply under the Original and implemented WGAA. The wording of 8.28.3 also implies no intention to change from a 1 April date and one might assume that if such flexibility had been intended or indeed exist in the Code already, that for the avoidance of doubt this would have been clarified in 8.28.3 when CAP188 was implemented.</p> <p>Overall we thus believe that both Ofgem and industry parties only intended for CAP179 to introduce the ability for the Authority to change implementation dates to prevent timing out. Also that under CAP188 implementation dates were always intended to be 01 April and CAP188 did not introduce any ability to change this: the Final Amendment Report para 4.30 confirms that:</p> <p>‘Implementation Dates for Charging Methodology Amendment Proposals should always be at the start of the charging year, namely 1<sup>st</sup> April each year.’ and the WGAA as per para 5.1 is identical to the Original in every other respect than not requiring a fixed cut-off date.</p> <p>Owing to these concerns regarding the legal text, while the flexibility to change implementation dates might occasionally be desirable, under exceptional circumstances only and only following consultation with industry (not merely the Panel), this issue deserves addressing separately. As many of the same individuals have been involved in many of the governance changes and the CMP195 group have explored this to some extent hopefully the same resource could address this point in a short timeframe. However as it is worthy of separate investigation we only fully support CMP195 not any of the WACMs. WACM1 is the most acceptable alternative but changes to 8.28.3 deserve further consideration.</p> <p>We would also note that not only the change itself, but changing the Code on such a potentially significant point through a ‘tidying’ modification, would result in an unacceptable increase in uncertainty to parties, undermining confidence in the market for existing and any potential new entrants considering entering the market. Thus would be detrimental to competition under Objective (b).</p>
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<p><b>Do you support the proposed implementation approach? If not, please state why and provide an alternative</b></p>	<p>Yes.</p>
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<b>suggestion where possible.</b>	
<b>Do you have any other comments?</b>	No.