

CUSC Modification Proposal Form

**CMP436 :
Update CUSC
arrangements to replace
the Electricity Arbitration
Association (EAA) with the
London Court of
International Arbitration
(LCIA) (Non-Charging)**

Overview: The EAA is now defunct. This modification looks to replace the EAA and replace them with the LCIA from non-charging sections of the codes.

Modification process & timetable



Status summary: The Proposer has raised a modification and is seeking a decision from the Panel on the governance route to be taken.

This modification is expected to have a: Low impact

CUSC Users

Proposer's recommendation of governance route	Standard Governance modification to proceed to Code Administrator Consultation	
Who can I talk to about the change?	<p>Proposer: Joseph Henry Joseph.henry2@nationalgrideso.com 07791257394</p>	<p>Code Administrator Contact: Catia Gomes Catia.gomes@nationalgrideso.com 07843816580</p>

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What is the issue?

Since 1993, the CUSC has used the Electricity Arbitration Association (EAA) as its official arbitration provider for any arbitration/disputes.

In Balancing and Settlement Code (BSC) modification [P457](#), it was highlighted that *“the EAA has not been used by a Market Participant since its inception in 1993 and does not provide good value for money for BSC Parties as monthly payments are required, irrespective of whether there are any disputes to consider. Moreover, the EAA is rarely used in commercial agreements, does not maintain its website and requires monthly payment, irrespective of whether their services are used. This therefore does not offer good value for money for BSC Parties”*.

[P457](#) proposed that the EAA was replaced within the BSC by the (LCIA) and removed the obligation on Elexon to make regular payments for arbitration services, instead only paying LCIA in the event of a dispute requiring resolution. This modification was approved by the Authority on 1 November 2023.

The CUSC currently contains multiple references to the EAA. As it has been established that the EAA is *de facto* defunct, it would be appropriate to align arbitration to that of other codes such as the BSC and the Retail Energy Code (REC).

Why change?

- i) The EAA has not been used in any industry dispute since 1993 and is not contactable. Its website is not updated, and as such it seems inappropriate for the CUSC to list this as its official arbitration provider.
- ii) The LCIA is an internationally recognised provider of arbitration services. The LCIA is also experienced in the resolution of Energy Codes disputes, and is the official arbitration service of both the BSC and the REC.
- iii) Elexon were responsible previously for paying the overhead costs of the EAA. Whilst the CUSC did not pay for this service, it references the service in non-charging sections on multiple instances. The LCIA offer a service whereby it requires payment in instances where there is a dispute requiring arbitration.
- iv) The LCIA is a not-for-profit company limited by guarantee. The LCIA Board is *“made up largely of prominent London-based arbitration practitioners, is principally concerned with the operation and development of the LCIA's business and with its compliance with applicable company law”*¹. They provide an appropriate level of expertise to administer arbitration disputes within the CUSC. The charges for this arbitration service fall upon the party initialising the arbitration. These costs are set out on the LCIA website².
- v) The proposed changes will be an improvement on the current service within the CUSC provisions.

¹ [Introduction \(lcia.org\)](#)

² [LCIA Website - Costs](#)

What is the proposer’s solution?

Update the references to the EAA with LCIA within the following elements of the CUSC:

- CUSC Section 4, Section 6, Section 7 and Section 11
- CUSC Exhibit O Part 1B, Exhibit O Part 2B Exhibit O Part 1C, Exhibit O Part 2C
- CUSC Schedule 2 Exhibit 3A.

Legal text

Please see Annex 1

What is the impact of this change?

Proposer’s assessment against CUSC Non-Charging Objectives	
Relevant Objective	Identified impact
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Positive Allows for a more efficient arbitration service within the CUSC
(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;	Positive Allows for an effective disputes process within CUSC
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	Neutral [Please provide your rationale]
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive Allows for a more efficient arbitration service within the CUSC
*The Electricity Regulation referred to in objective (c) is Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006.	

Proposer’s assessment of the impact of the modification on the stakeholder / consumer benefit categories	
Stakeholder / consumer benefit categories	Identified impact
Improved safety and reliability of the system	Neutral
Lower bills than would otherwise be the case	Neutral
Benefits for society as a whole	Neutral
Reduced environmental damage	Neutral
Improved quality of service	Positive The appointment of the LCIA would be an improvement on the current arbitration service outlined in non-charging sections of the CUSC

When will this change take place?

Implementation date

10 Business Days after Authority decision – The code changes will need to be implemented prior to the 01 September 2024 to align with CMP398 implementation and potential for increase need for Arbitration.

Date decision required by

15 August 2024

Implementation approach

No systems or processes will require update

Proposer’s justification for governance route

Governance route: Standard Governance modification to proceed to Code Administrator Consultation

As the modification seeks to change the process of arbitration in the CUSC, Authority should make a decision on this. This is a minor change and does not require a Workgroup.

Interactions

- Grid Code
- BSC
- STC
- SQSS
- European Network Codes
- EBR Article 18 T&Cs³
- Other modifications
- Other

The Grid Code and STC will also be updated

Acronyms, key terms and reference material

Acronym / key term	Meaning
BSC	Balancing and Settlement Code
CMP	CUSC Modification Proposal
CUSC	Connection and Use of System Code
EBR	Electricity Balancing Regulation
STC	System Operator Transmission Owner Code
SQSS	Security and Quality of Supply Standards
T&Cs	Terms and Conditions
EAA	Electricity Arbitration Association
LCIA	London Court of International Arbitration
REC	Retail Energy Code

Annexes

Annex	Information
Annex 1	Legal text

³ If your modification amends any of the clauses mapped out in Exhibit Y to the CUSC, it will change the Terms & Conditions relating to Balancing Service Providers. The modification will need to follow the process set out in Article 18 of the Electricity Balancing Guideline (EBR – EU Regulation 2017/2195) – the main aspect of this is that the modification will need to be consulted on for 1 month in the Code Administrator Consultation phase. N.B. This will also satisfy the requirements of the NCER process.