



Direct Dial: 020-7901-7355

31 July 2002

The National Grid Company, CUSC Signatories and  
Other Interested Parties

Your Ref: CAP005  
Our Ref: IND/COD/CUSC/CAP005

Dear Colleague,

**Amendment to the Connection and Use of System Code (“CUSC”) - Decision and Notice in relation to Proposed Amendment CAP005: “Panel’s Role & Report Process”.**

The Gas and Electricity Markets Authority (the “Authority”<sup>1</sup>) has carefully considered the issues raised in the Amendment Report<sup>2</sup> in respect of Proposed Amendment CAP005 “Panel’s Role & Report Process”.

The National Grid Company plc (“NGC”) recommended to the Authority that:

- (i) Proposed Amendment CAP005 be rejected;
- (ii) Alternative Amendment (A), as developed by the Governance Amendments Working Group, be rejected; and
- (iii) Alternative Amendment (B), as proposed in response to NGC’s wider consultation, be approved and implemented with effect from 10 days after the Authority’s decision.

The Authority has decided not to direct a modification to the CUSC.

This letter explains the background to Proposed Amendment CAP005, as set out in the Amendment Report, and sets out the Authority’s reasons for its decision.

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<sup>1</sup> Ofgem is the office of the Authority. The terms “Ofgem” and “the Authority” are used interchangeably in this letter.

<sup>2</sup> CAP005 Amendment Report dated 9 May 2002.

## Background

The Proposer considers that the role of the CUSC Amendments Panel in the CUSC Amendment Process is neither strong enough nor consistent with the BSC. Further, the Proposer asserted that the Panel should have the appropriate constitutional powers to enable it to provide checks and balances in relation to the actions of NGC and the Authority within the Amendment Process. The Proposer stated that Proposed Amendment CAP005 would promote a better evaluation of Proposed Amendments by the Panel as a neutral body in the decision making process and would therefore better facilitate the achievement of the Applicable CUSC Objectives<sup>3</sup>. In addition, the Proposer also suggested changes to the reporting process in respect of Proposed Amendments in order to further improve transparency and therefore bring the CUSC into line with best industry practice. The Proposer considers that incorporating best industry practice should form an essential part of NGC's responsibility to efficiently discharge the obligations imposed upon it under the Electricity Act 1989 and by the Transmission Licence.

Proposed Amendment CAP005 was raised by British Energy Generation Ltd on 31 October 2001 and was submitted for consideration at the CUSC Amendments Panel Meeting on 9 November 2001. At the meeting the Panel determined that a Working Group should be established to consider the Proposed Amendment. The Governance Amendments Working Group was established to evaluate Proposed Amendment CAP005. The Group was unable to reach an agreement as to whether the Proposed Amendment better facilitated achievement of the Applicable CUSC Objectives. The Group formulated an Alternative Amendment which it considered better facilitated achievement of the Applicable CUSC Objectives as compared with the Proposed Amendment. The Working Group report was submitted for consideration at the Panel Meeting on 22 February 2002. The Panel endorsed the Working Group report and determined that the Proposed Amendment and the Alternative Amendment should proceed to wider consultation by NGC. A consultation paper was issued on 28 February 2002 with responses invited by 28 March 2002. On 27 March 2002 an extension to the timetable in respect of Proposed Amendment CAP005 was requested. The request was made to enable Amendments Panel Members to view the responses made during consultation before providing their views to be included in the Amendment Report. The Authority did not object to the request to extend the timetable and the final Amendment Report was submitted to the Authority on 9 May 2002.

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<sup>3</sup> The Applicable CUSC Objectives are contained in Standard Condition C7F of the licence to transmit electricity treated as granted to NGC under Section 6 of the Electricity Act 1989 as amended (the "Transmission Licence") and 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.

## **The Proposed Amendment**

Proposed Amendment CAP005 seeks to modify Section 8 of the CUSC so as to extend the role of the CUSC Amendments Panel as a key governance feature of the CUSC and to improve the transparency of the reporting process to industry and other stakeholders.

The suggested changes in Proposed Amendment CAP005 can be grouped into the following sections:

### Amendment Register

Proposed Amendment CAP005 seeks to modify paragraph 8.12.1 of the CUSC such that the Panel Secretary would establish and maintain the Amendment Register instead of NGC.

The Proposed Amendment also seeks to add a paragraph to 8.12 (paragraph 8.12.5) so that the Amendment Register would include details of withdrawn and rejected Amendment Proposals and implemented Approved Amendments.

### Progress Report

Proposed Amendment CAP005 seeks to modify paragraph 8.13.1 of the CUSC to make the Panel Secretary, rather than NGC, responsible for preparing and submitting the Progress Report.

The Proposed Amendment also seeks to modify paragraph 8.13.3 so that the Authority would be required to provide its reasons for issuing a notice requesting NGC and the Amendments Panel not to reject an Amendment Proposal, not to amalgamate an Amendment Proposal, to accord a different priority to an Amendment Proposal or to amend the timetable for an Amendment Proposal, in relation to developments and changes highlighted in the monthly Progress Report.

### Amendment Proposals

Proposed Amendment CAP005 seeks to modify paragraph 8.15.3 of the CUSC so that Amendment Proposals submitted by the Amendments Panel under paragraphs 8.21.8<sup>4</sup> and 8.23.5<sup>5</sup> would not be required to contain the same information as an Amendment Proposal submitted in accordance with paragraph 8.15.2.

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<sup>4</sup> The Amendments Panel can initiate the Amendment Procedures following the implementation of an Urgent Amendment Proposal in order to consider whether any Alternative Amendment would better facilitate achievement of the Applicable CUSC Objectives.

<sup>5</sup> The Amendments Panel can initiate the Amendment Procedures if an amendment is made to the CUSC in accordance with the Transmission Licence but other than pursuant to the Amendment Procedures.

The Proposed Amendment also seeks to modify paragraph 8.15.3 so that the Panel Secretary would be required to consult with the Amendments Panel before an Amendment Proposal is rejected if it fails in any material effect to provide the information in paragraph 8.15.2.

In addition, the Proposed Amendment seeks to modify paragraph 8.15.4 such that the Panel Secretary be required to consult with the Amendments Panel before an Amendment Proposal is rejected if that Amendment Proposal, in the opinion of the Panel, would have the same effect as a Pending Amendment Proposal or a Rejected Amendment Proposal.

#### Panel Proceedings

Proposed Amendment CAP005 seeks to modify paragraph 8.16.4 of the CUSC such that the Amendment Process timetable, in respect of the consultation to be undertaken by NGC, be set by NGC in consultation with the Amendments Panel rather than by NGC alone. The Proposed Amendment also seeks to modify this paragraph so that the Authority would be required to provide its reasons for objecting to a request to extend the Amendment Process timetable submitted in accordance with sub-paragraph 8.16.4(e).

#### Working Groups

Proposed Amendment CAP005 seeks to modify paragraph 8.17.4 of the CUSC such that Working Group chairmen be appointed by the Amendments Panel in consultation with NGC rather than by NGC in consultation with the Amendments Panel.

The Proposed Amendment also seeks to modify paragraph 8.17.6 so that the Amendments Panel would be able to (but would not be obliged to) replace the chairman of a Working Group in the circumstances outlined under that paragraph.

In addition the Proposed Amendment seeks to modify paragraph 8.17.10 such that “all of the diverse views” of the members of the Working Group be reflected in the Working Group report if the Group is unable to reach agreement.

The Proposed Amendment seeks to modify paragraph 8.17.11 to the effect that the Working Group would be able to nominate a member of the Group to present the findings and/or answer the questions of Panel Members in respect of the Working Group report.

#### Standing Groups

Proposed Amendment CAP005 seeks to modify paragraph 8.18.3 of the CUSC such that Standing Group chairmen be appointed by the Amendments Panel in consultation with NGC rather than by NGC in consultation with the Amendments Panel.

The Proposed Amendment also seeks to modify paragraph 8.18.5 to the effect that the Amendments Panel would be able to (but would not be obliged to) replace the chairman of a Standing Group in the circumstances outlined under that paragraph.

The Proposed Amendment seeks to modify paragraph 8.18.6 such that “all of the diverse views” of the members of the Standing Group would be reflected in the Standing Group report if the Group was unable to reach agreement. In addition the Proposed Amendment seeks to modify paragraph 8.18.6 so that the Standing Group would be able to nominate a member of the Group to present the findings and/or answer the questions of Panel Members in respect of the Standing Group report.

#### Amendment Report

Proposed Amendment CAP005 seeks to modify paragraph 8.20.1 of the CUSC such that the Amendments Panel, in conjunction with NGC and taking due account of the consultation responses received, prepare and submit the Amendment Report to the Authority.

The Proposed Amendment also seeks to modify paragraph 8.20.2 so that the Amendments Panel would be able to add its recommendation, separately and with equal emphasis, to the recommendation of NGC included in the Amendment Report. The Proposed Amendment seeks to further modify this paragraph such that a full description and analysis of any Alternative Amendment developed by a Working Group or proposed during consultation be included in the Amendment Report. Finally the Proposed Amendment seeks to modify this paragraph so that an estimate of development, capital and operating costs to “such CUSC Parties” associated with implementing the changes set out in a Proposed Amendment be included in the Amendment Report.

In addition, the Proposed Amendment seeks to modify paragraph 8.20.3 such that the Panel Secretary would circulate the draft Amendment Report rather than NGC.

#### Urgent Amendment Proposals

Proposed Amendment CAP005 seeks to modify paragraphs 8.21.2 and 8.21.3 of the CUSC so that the criteria for urgency in respect of Urgent Amendment Proposal would be that the proposal is “...so urgent that it cannot wait for the full Amendment Procedures to be completed...”.

#### **Alternative Amendments (A) and (B)**

The Governance Amendments Working Group was unable to reach an agreement in respect of Proposed Amendment CAP005. The Working Group considered that there was more than one principle involved in the Proposed Amendment and this made it more difficult to agree whether the Proposed Amendment better facilitated achievement of the Applicable CUSC Objectives or to identify the differing Working Group views as a whole. The Group formulated

Alternative Amendment (A) which it considered better facilitated achievement of the Applicable CUSC Objectives as compared with the Proposed Amendment. Alternative Amendment (A) was formulated using a “highest common factor” approach whereby the groups of changes put forward in the Proposed Amendment that received unanimous support from the Group went on to form part of Alternative Amendment (A). Alternative Amendment (B) was proposed during NGC’s wider consultation and is identical to Alternative Amendment (A) in its intent, but incorporates a textual change in order to increase the clarity of the proposed legal text.

The changes put forward for consideration in Alternative Amendments (A) and (B) can be grouped into the following sections:

#### Amendment Register

Alternative Amendments (A) and (B) seek to modify paragraph 8.12.3 of the CUSC such that the Amendment Register include details of withdrawn and rejected Amendment Proposals and implemented Approved Amendments.

#### Progress Report

Alternative Amendments (A) and (B) seek to modify paragraph 8.13.1 of the CUSC such that NGC be obliged to prepare and submit the Progress Report to the Authority each month.

#### Panel Proceedings

Alternative Amendments (A) and (B) seek to modify paragraph 8.16.4 of the CUSC such that NGC and the Amendments Panel together establish the timetable to apply for the consideration of an Amendment Proposal by the Amendments Panel and by a Working Group (if any), and the timetable to apply for the consultation on an Amendment Proposal to be undertaken by NGC.

#### Working Groups

Alternative Amendments (A) and (B) seek to modify paragraph 8.17.6 of the CUSC such that NGC, in consultation with the Amendments Panel, be able to replace the chairman of a Working Group in the circumstances outlined under that paragraph.

In addition Alternative Amendments (A) and (B) seek to modify paragraph 8.17.10 of the CUSC such that “all the views” of the members of the Working Group be reflected in the Working Group report if the Group is unable to reach agreement.

#### Standing Groups

Alternative Amendments (A) and (B) seek to modify paragraph 8.17.6 of the CUSC such that NGC, in consultation with the Amendments Panel, would be able to replace the chairman of a Standing Group under the circumstances outlined in the paragraph.

In addition Alternative Amendments (A) and (B) seek to modify paragraph 8.17.10 such that “all the views” of the members of the Standing Group be reflected in the Standing Group report if the Group is unable to reach agreement.

#### Amendment Report

Alternative Amendments (A) and (B) seek to modify paragraph 8.20.2 of the CUSC such that an estimate of development, capital and operating costs to “such CUSC Parties” associated with implementing the changes be included in the Amendment Report.

NGC issued a consultation paper on 28 February 2002 inviting views from CUSC Parties and interested parties.

#### **Respondents’ views**

NGC received seven responses to the consultation on Proposed Amendment CAP005, of which five were in favour of Alternative Amendment (A) and two in favour of both the Proposed Amendment and Alternative Amendment (A).

A majority of respondents supported Alternative Amendment (A) as compared with the Proposed Amendment since its more targeted approach would improve the clarity and efficiency of the Amendment Process and hence better facilitate achievement of the Applicable CUSC Objectives.

One respondent considered that Alternative Amendment (A) had “lost” some elements of the Proposed Amendment, in particular the proposed changes that dealt with the role of the CUSC Amendments Panel. Further to this, one respondent that supported the Proposed Amendment made reference to the proposed changes that allowed the Amendments Panel a greater role in the Amendment Process and considered that these better facilitated achievement of the Applicable CUSC Objectives. NGC stated that these proposed changes would conflict with the obligations contained in the Transmission Licence to establish and operate procedures for the modification of the CUSC (including procedures for modification of the modification procedures themselves).

A number of respondents supported the Working Group’s recommendation that NGC take forward the issue of clarifying the definition of an Alternative Amendment and the process of Urgent Amendments. NGC noted these responses and a Governance Standing Group was established at the March Amendments Panel Meeting to consider various aspects of the current Amendment Process for the evaluation of Proposed Amendments. NGC further noted the points raised by one respondent with regard to the legal text contained in the consultation

paper. NGC stated that it recognised that there were issues relating to the withdrawal of Proposed Amendments (paragraph 8.15.8 of the CUSC) and that this will be reviewed with a view to bringing forward an Amendment Proposal.

The respondents' views are summarised and contained in the Amendment Report in respect of Proposed Amendment CAP005.

### **Amendments Panel Members' views**

It was the opinion of the majority of those Amendments Panel Members expressing a view that Alternative Amendment (B), as set out in the Amendment Report, should be approved and implemented with effect from 10 days after the Authority's decision.

### **NGC's recommendation**

NGC recommended that the Authority should not approve Proposed Amendment CAP005. NGC considered that the Proposed Amendment contains suggested changes that are not consistent with the requirements placed on NGC in the Transmission Licence and therefore would not add clarity or efficiency to the Amendment Process and consequently the Proposed Amendment would not better facilitate achievement of the Applicable CUSC Objectives.

NGC recommended that the Authority approve Alternative Amendment (B) and that if approved Alternative Amendment (B) be implemented with effect from 10 days after the Authority's decision. NGC considered that Alternative Amendment (B) provides a more focused alternative to the Proposed Amendment and therefore better facilitates achievement of the Applicable CUSC Objectives.

### **Ofgem's view**

Ofgem considers, having had regard to its statutory duties, that Proposed Amendment CAP005 and Alternative Amendments (A) and (B), as set out in the Amendment Report, do not better facilitate achievement of the Applicable CUSC Objectives.

Proposed Amendment CAP005 and Alternative Amendments (A) and (B) each comprise numerous elements. In coming to its view as to whether a proposal can be approved, Ofgem cannot make determinations in favour of individual elements of a proposal, but instead must consider the proposal as a whole, taking all the individual elements into account before deciding whether, as a totality, the proposal under consideration better facilitates achievement of the Applicable CUSC Objectives and is consistent with Ofgem's statutory obligations.

It is Ofgem's view that, while Proposed Amendment CAP005 and Alternative Amendments (A) and (B) comprise some individual elements that would better facilitate achievement of the

Applicable CUSC Objectives, the proposals also include individual elements that would not better facilitate achievement of the Applicable CUSC Objectives. It is Ofgem's view that this second group of elements, if approved and implemented, would have a significant detrimental impact on the Amendment Procedures as set out in section 8 of the CUSC. Ofgem considers therefore that, as a totality, the Proposed Amendment and Alternative Amendments (A) and (B) do not better facilitate achievement of the Applicable CUSC Objectives.

Those elements that, in Ofgem's view, would have a significant detrimental impact on the CUSC Amendment Procedures are given below.

### Proposed Amendment CAP005

#### Progress Report

Proposed Amendment CAP005 seeks to modify paragraph 8.13.3 of the CUSC so that the Authority would be required to provide its reasons for issuing a notice requesting not to reject an Amendment Proposal, not to amalgamate an Amendment Proposal, to accord a different priority to an Amendment Proposal or to amend the timetable for an Amendment Proposal, in relation to developments and changes highlighted in the monthly Progress Report. In addition, the Proposed Amendment seeks to modify paragraph 8.16.4 of the CUSC so that the Authority would be required to provide its reasons for issuing a notice objecting to a request to extend the Amendment Process timetable submitted in accordance with sub-paragraph 8.16.4(e).

Ofgem considers that it is not appropriate to include in the CUSC, blanket obligations on the Authority regarding the publication of its reasons for issuing notices. Ofgem considers that there are many circumstances where it would be inappropriate to do so. For example in coming to a decision, the Authority may have regard to relevant confidential information in its possession. To place a requirement on the Authority that it publish its reasons, regardless of the confidential nature of these reasons, could lead to market sensitive information being placed in the public domain. This in turn could lead to the interests of CUSC Parties or classes of CUSC Parties being seriously and prejudicially affected. It is therefore Ofgem's view that Proposed Amendment CAP005 would not better facilitate achievement of the Applicable CUSC Objective C7F.1(b) to facilitate effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitate such competition in the sale, distribution and purchase of electricity. However, subject to the above constraints, Ofgem has provided, and would expect to continue to provide, reasons for its actions as a matter of good practice.

#### Amendment Report

Proposed Amendment CAP005 seeks to modify paragraph 8.20.1 of the CUSC such that the Amendments Panel, in conjunction with NGC, prepare and submit to the Authority the Amendment Report.

It is Ofgem's view that, in the interests of efficiency, clarity and transparency and as a matter of good practice, the responsibility for the preparation and submission of the Amendment Report must be clearly assigned to a single entity. Ofgem considers that the Proposed Amendment seeks to divide this responsibility, the result of which, in the event of a disagreement between the Panel and NGC, could potentially lead to inefficiency and delay in the preparation and submission of the Amendment Report without any sufficient counterbalancing benefit. Ofgem considers that the timetabling provisions in paragraph 8.16.4 will not, in themselves, resolve such problems. It is therefore Ofgem's view that Proposed Amendment CAP005 would not better facilitate achievement of the Applicable CUSC Objective C7F.1(a) for the efficient discharge by NGC of the obligations imposed upon it under the Act and by its Transmission Licence. In addition it is Ofgem's view that the proposed change could adversely affect NGC's ability to comply with the requirements of its Transmission Licence since, in accordance with Conditions C7F.6(b)(v) and (vi) of its Transmission Licence, NGC is responsible for establishing and operating procedures for the modification of the CUSC, including the preparation and submission of Amendment Reports. Ofgem considers that these obligations remain appropriate and that there is no reason to modify the licence.

Proposed Amendment CAP005 seeks to modify paragraph 8.20.2 of the CUSC such that the Amendment Report include, separately and with equal emphasis, the recommendation of both NGC and the Amendments Panel in respect of a Proposed Amendment.

It is Ofgem's view that only NGC should supply a recommendation in respect of a Proposed Amendment to be included in the Amendment Report since this is consistent with the obligations relating to the CUSC placed on NGC in the Transmission Licence. Ofgem does consider it appropriate that the Amendments Panel's views should continue to be reflected in the Amendment Report. Paragraph 8.20.2(b) of the CUSC provides for a summary, agreed by the Amendments Panel, of the views, including any recommendations from Panel Members and/or the Working Group, made during the consultation to be included in the Amendment Report.

Proposed Amendment CAP005 seeks to further modify paragraph 8.20.2 so that an estimate of development, capital and operating costs to "such CUSC Parties" associated with implementing the changes set out in a Proposed Amendment be included in the Amendment Report.

Ofgem considers that sub-paragraph 8.20.2(h) relates to costs to CUSC Parties in general. Under Section 8 of the CUSC there is no requirement placed on Parties to

provide information relating to development, capital and operating costs, which may vary significantly between companies, to be included in the Amendment Report. Ofgem does not consider that either the Amendments Panel or NGC would have, or that it is appropriate that they should be provided with, the degree of information which would be necessary to provide an analysis of sufficient substance to materially benefit the consideration of a Proposed Amendment, either by CUSC Parties, the Panel or Ofgem. As a result any such estimate of development, capital and operating costs is likely to be at a high, indicative level only, and not company specific. It is therefore Ofgem's view that the proposed change would not better facilitate achievement of the Applicable CUSC Objective C7F.1(a).

### Alternative Amendments (A) and (B)

#### Panel Proceedings

Alternative Amendments (A) and (B) seek to modify paragraph 8.16.4 of the CUSC such that NGC and the Amendments Panel together establish the timetable to apply for the consideration of an Amendment Proposal by the Amendments Panel and by a Working Group (if any), and the timetable to apply for the consultation on an Amendment Proposal to be undertaken by NGC.

It is Ofgem's view that, in the interests of efficiency, clarity and transparency and as a matter of good practice, the responsibility for the establishment of the timetable to apply for the consideration of an Amendment Proposal by the Amendments Panel and by a Working Group (if any), and the timetable to apply for the consultation on an Amendment Proposal to be undertaken by NGC, must be clearly assigned to a single entity in each case. Ofgem considers that Alternative Amendments (A) and (B) seek to merge this responsibility, the result of which, in the event of a disagreement between the Panel and NGC, could potentially lead to inefficiency and delays in the Amendment Process without any sufficient counterbalancing benefit. It is therefore Ofgem's view that Alternative Amendments (A) and (B) would not better facilitate achievement of the Applicable CUSC Objective C7F.1(a). In addition it is Ofgem's view that the proposed change could adversely affect NGC's ability to comply with the requirements of its Transmission Licence since, in accordance with Conditions C7F.6(b)(iii) and (iv) of its Transmission Licence, NGC is responsible for establishing and operating procedures which provide for the proper evaluation as to whether a proposed modification would better facilitate achieving the Applicable CUSC Objectives and for the development of any alternative modification, which may, as compared with the proposed modification, better facilitate achieving the Applicable CUSC Objectives. Ofgem considers that these obligations remain appropriate and that there is no reason to modify the licence.

#### Amendment Report

Alternative Amendments (A) and (B) seek to modify paragraph 8.20.2 of the CUSC such that an estimate of development, capital and operating costs to “such CUSC Parties” associated with implementing the changes be included by NGC in the Amendment Report.

For the reasons given previously, it is Ofgem’s view that the proposed change would not better facilitate achievement of the Applicable CUSC Objective C7F.1(a).

### **The Authority’s decision**

The Authority has therefore decided not to direct that Proposed Amendment CAP005 or Alternative Amendments (A) or (B), as set out in the Amendment Report, should be made and implemented.

If you have any queries in relation to the issues raised in this letter, please feel free to contact me on the above number.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. N. Simpson', written over a horizontal line.

**Nick Simpson**

**Director of Industry Code Development**

Signed on behalf of the Authority and authorised for that purpose by the Authority