



Direct Dial: 020-7901-7355

29 July 2002

The National Grid Company, CUSC Signatories and
Other Interested Parties

Your Ref: CAP007
Our Ref: IND/COD/CUSC/CAP007

Dear Colleague,

Amendment to the Connection and Use of System Code (“CUSC”) - Decision and Notice in relation to Proposed Amendment CAP007: “Role of Standing Group”.

The Gas and Electricity Markets Authority (the “Authority”¹) has carefully considered the issues raised in the Amendment Report² in respect of Proposed Amendment CAP007 “Role of Standing Group”.

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

- (i) Proposed Amendment CAP007 be rejected; and
- (ii) The Alternative Amendment as developed by the Governance Amendments Working Group 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 CAP007, as set out in the Amendment Report, and sets out the Authority’s reasons for its decision.

Background

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

² CAP007 Amendment Report dated 9 May 2002.

Proposed Amendment CAP007 seeks to extend the role and remit of Standing Groups within the Amendment Process as currently described in section 8 of the CUSC (CUSC Amendment).

The Proposer stated that the role of Standing Groups as described in the CUSC is too restrictive and that Standing Groups are “beholder” to the Amendments Panel for their terms of reference, which may or may not permit a Standing Group to respond as a body to a wider consultation undertaken by NGC in respect of a Proposed Amendment (paragraph 8.19.1 of the CUSC). The Proposer declared that a Standing Group should not have such a restriction placed upon it and that it should be afforded the right to provide an informed response to any consultation that is within the scope of its terms of reference. The Proposer considered that extending the role of Standing Groups would lead to a more comprehensive evaluation of Proposed Amendments and would therefore better facilitate achievement of the Applicable CUSC Objectives³.

Proposed Amendment CAP007 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 Amendments 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 CAP007 but 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 was supported unanimously as better facilitating achievement of the Applicable CUSC Objectives as compared with the Proposed Amendment. The Group submitted its Working Group Report 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 4 March 2002 with responses invited by 4 April 2002. On 27 March 2002 an extension to the timetable in respect of Proposed Amendment CAP007 was requested. The request was made in order to enable Amendments Panel Members to view comments made during consultation before providing their views to be included in the Amendment Report. The Authority did not object to the timetable extension and the final Amendment Report was submitted to the Authority on 9 May 2002.

³ 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 CAP007 seeks to modify Section 8 of the CUSC to enable any Standing Group to comment as a body on a Proposed Amendment that the Group has not been specifically actioned to consider by the Amendments Panel.

Proposed Amendment CAP007 seeks to allow both a Working Group and a Standing Group to consider a particular Proposed Amendment at the same time and to enable a Standing Group to respond as a body to NGC's wider consultation in respect of any Proposed Amendment that the Standing Group has an appropriate interest in.

The Alternative Amendment

The Governance Amendments Working Group supported the principle of increasing the role and remit of Standing Groups but felt that such Groups should not be given an independent role and should remain under the clear direction of the Amendments Panel.

Working Group members raised the concern that the Proposed Amendment enabled both a Working Group and a Standing Group to provide views on a Proposed Amendment without a clear lead responsibility. The Group considered that failure to clearly allocate this responsibility could cause potential conflict and confusion along with potential duplication of work. The Proposed Amendment also suggests a change to the effect that Standing Groups would be given the remit to comment on Proposed Amendments that they had not been actioned to consider. The Working Group stated that the Standing Group's views should carry no greater weight than any other views submitted as part of a consultation.

The Proposer countered that the intent of the Proposed Amendment is to increase the flexibility of the Amendment Process by giving the Amendments Panel the option to appoint both a Working Group and a Standing Group to consider a Proposed Amendment. By making the governance less restrictive the Proposer asserted that the potential value of Standing Groups could be increased which would in turn increase the efficiency of the Amendment Process.

The Working Group was unable to reach an agreement as to whether the Proposed Amendment better facilitated achievement of the Applicable CUSC Objectives and the Group formulated the Alternative Amendment that it unanimously supported and agreed better facilitated achievement of the Applicable CUSC Objectives as compared with the Proposed Amendment. The Group considered that the Alternative Amendment recognises the importance of allowing flexibility in the Amendment Process for evaluating proposals and the merits of enabling the Amendments Panel to consult expert groups.

The Alternative Amendment seeks to allow a Standing Group to be able to comment upon a Proposed Amendment if specifically requested by the Amendments Panel and to enable a

Standing Group to respond as a body to NGC's wider consultation in respect of a Proposed Amendment if specifically requested by the Amendments Panel.

Respondents' views

NGC received eight responses to the consultation in respect of Proposed Amendment CAP007, of which seven were in favour of the Alternative Amendment and one in favour of both the Proposed Amendment and the Alternative Amendment.

One respondent supported the Alternative Amendment in principle but considered that the role of Standing Groups warranted further review separately within the CUSC. One respondent supported the Alternative Amendment over the Proposed Amendment because it offered protection against potential abuse by a Standing Group of its powers.

One respondent noted that the Proposed Amendment could lead to a duplication of work and the possibility of a clash of interests between Standing and Working Groups. However another respondent felt that these concerns could be addressed in the terms of reference of the Standing and Working Groups in question.

The majority of respondents considered that the Alternative Amendment would better facilitate achievement of the Applicable CUSC Objectives as it would increase the flexibility and clarity of the role of Standing Groups in the Amendment Process but would leave Standing Groups under the clear direction of the Amendments Panel.

The respondents' views are summarised and contained in the Amendment Report in respect of Proposed Amendment CAP007.

Amendments Panel Members' views

It was the opinion of those Amendments Panel Members expressing a view that the Alternative Amendment, 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 CAP007. NGC considered that providing Standing Groups with generic powers to comment on Proposed Amendments could potentially cause conflict, confusion and duplication of work between Working Groups and Standing Groups and therefore that the Proposed Amendment did not better facilitate achievement of the Applicable CUSC Objectives.

NGC recommended that the Authority approve the Alternative Amendment and that if approved the Alternative Amendment be implemented with effect from 10 days after the Authority's decision. NGC considered that the Alternative Amendment enables more flexibility

in the process for the Amendments Panel to consult with Standing Groups but leaves Standing Groups under the clear direction of the Amendments Panel and therefore that the Alternative Amendment better facilitated achievement of the Applicable CUSC Objectives.

Ofgem's view

Ofgem considers, having had regard to its statutory duties, that Proposed Amendment CAP007 and the Alternative Amendment, as set out in the Amendment Report, do not better facilitate achievement of the Applicable CUSC Objectives.

Proposed Amendment CAP007 seeks to modify Section 8 of the CUSC to allow both a Working Group and a Standing Group to consider a particular Proposed Amendment but does not define which of the two Groups would have the lead responsibility. It is Ofgem's view that this proposed change could lead to potential conflict between, and confusion in, the two Groups and would raise the possibility that the work produced by one Group would be duplicated by the other. It is Ofgem's view that this proposed change would introduce inefficiencies in the Amendment Process and therefore would not better facilitate achievement of the Applicable CUSC Objective C7F(a).

The Governance Amendment Working Group framed the Alternative Amendment in part to address this issue. However, Ofgem considers that the CUSC Amendment Process, as described in Section 8 of the CUSC, already provides for a Standing Group to comment as a body on a Proposed Amendment in cases where such comment is considered to be of greater value to the Amendment Process than the comments of individual Standing Group members in isolation. In situations where it is not considered appropriate for a Standing Group to comment as a body on a Proposed Amendment, the CUSC provides for access, where necessary, to the individual experience and expertise of Standing Group members.

Ofgem considers that there may be situations in which it is appropriate for an existing Standing Group to comment on a Proposed Amendment. This may be necessary where a Proposed Amendment impacts on the periphery of the work being undertaken by a Standing Group but is not the main substance of the Standing Group's work. For example, a Standing Group may wish to comment on how a Proposed Amendment impacts on the work being undertaken by the Standing Group and outline changes to the Proposed Amendment which may aid its work. In such situations the Amendments Panel can amend the terms of reference of an existing Standing Group such that the Group can respond as a body to NGC's wider consultation in respect of that Proposed Amendment (paragraph 8.19.1 of the CUSC). As such, the Standing Group's representation would be appended to the Amendment Report, be publicly available, and would inform Ofgem's decision on the matter.

Further to this, sub-paragraph 8.19.1(ii) provides for "persons who may properly be considered to have an appropriate interest" in a Proposed Amendment to respond to the wider consultation undertaken by NGC in respect of the Proposed Amendment. Therefore, if the Amendments Panel does not consider it appropriate that the Standing Group comment

as a body on a Proposed Amendment, Standing Group members with relevant experience and expertise in relation to a Proposed Amendment may provide an individual response to the wider consultation undertaken by NGC in respect of the Proposed Amendment.

Paragraphs 8.8.2 and 8.8.3 of the CUSC provide for the Amendments Panel Chairman and Amendments Panel Members to invite any person, which could include any member of a Standing Group, to attend and speak at meetings of the Amendments Panel. Similarly paragraph 8.17.9 of the CUSC provides for the Working Group chairman and Working Group members to invite any person, which could include any member of a Standing Group, to attend and speak at meetings of the Working Group. The experience and expertise of Standing Group members is therefore readily accessible to both the Amendments Panel and Working Groups should they require expert input into the consideration and evaluation of Proposed Amendments, a wider perspective on issues relating to the connection and use of system arrangements, or information on any other issues as they see fit. While Ofgem does not consider that the views of Standing Group members should carry especial weight, it does expect those with the power to do so to ensure that the Amendment Process benefits from the expertise of Standing Group members where it is thought that this will beneficially inform consideration of an Amendment Proposal.

The Authority's decision

The Authority has therefore decided not to direct that Proposed Amendment CAP007 or the Alternative Amendment, 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', with a horizontal line underneath the text.

Nick Simpson

Director of Industry Code Development

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