



National Grid

CONSULTATION DOCUMENT

CAP006

Non-Discrimination

**The purpose of this document is to
consult on Amendment Proposal CAP006
with CUSC Parties and other interested
Industry members**

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1.0 Executive Summary

- 1.1 British Energy, with support from other Parties (as detailed in the Amendment Proposal form), submitted CUSC Amendment Proposal CAP006 to the Amendments Panel for consideration at their 9th November 2001 meeting. The Amendments Panel determined that CAP006 should be evaluated further by a Working Group and set Terms of Reference to review the Amendment Proposal and report back to the 22nd February 2002 meeting.
- 1.2 CAP006 proposes to add provision for an amendment proposal not to be approved if it unduly discriminates or unduly prefers particular CUSC Parties.
- 1.3 The Governance Amendments Working Group (GAWG) evaluated the Amendment Proposal against the applicable CUSC objectives but were unable to reach agreement. In general the principle of CAP006 was supported by the majority of the Working Group, but there were strong opposing views. The Working Group formulated some alternative draft text, which the majority of the Group agreed better facilitated the applicable CUSC objectives and this was presented as an Alternative Amendment.
- 1.4 The Working Group delivered its Report to the Panel Secretary on 8th February 2002 in preparation for the February Panel meeting. The Amendments Panel acknowledged the work undertaken by the Working Group and agreed that they had satisfied the Terms of Reference and that National Grid should undertake wider Industry consultation.
- 1.5 This document initiates the wider industry consultation process and invites views on CUSC Amendment Proposal CAP006. The consultation closing date is **28th March 2002**.

2.0 Introduction

- 2.1 This consultation document is issued by National Grid under the procedures specified in the Connection and Use of System Code (CUSC). It addresses issues associated with the Proposed Amendment to add provision for an Amendment Proposal not to be approved if it unduly discriminates or unduly prefers particular CUSC Parties.
- 2.2 Further to the submission of Amendment Proposal CAP006, and the subsequent evaluation by the CUSC Governance Working Group, this document seeks views from industry members relating to the Amendment Proposal.
- 2.3 This document outlines the discussions held by the Working Group and the nature of the CUSC changes that are proposed. Representations received in response to this consultation document will be included in National Grid's Amendment Report that will be furnished to the Authority for their decision.
- 2.4 This consultation document has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid website, at <http://www.nationalgrid.com/uk/indinfo/cusc>, along with the Working Group Report for CAP006 and the Amendment Proposal form.

3.0 The Amendment Proposal

- 3.1 CAP006 proposes to introduce provision in Section 8 of the CUSC for an Amendment Proposal not to be approved if it unduly discriminates or unduly prefers particular CUSC Parties.
- 3.2 The Proposer considers that the Proposed Amendment would bring the CUSC amendment process into line with best regulatory practice of carrying out an assessment of the direct and indirect implications of proposed changes to the equal treatment of all CUSC Parties. CAP006 is proposed to improve existing practice and increase confidence in the CUSC by safeguarding against undue discrimination, therefore better facilitating competition in the electricity market. The draft text included by the Proposer to give effect to CAP004 is contained in Part A of Annex 1.

4.0 Working Group Discussions

- 4.1 In general the principle of making non-discrimination an explicit requirement in the CUSC was supported by members of the Working Group, however there were also strong and diverse views represented in the Group.
- 4.2 The Working Group agreed that changes to the CUSC should not unduly discriminate against any particular CUSC Party or classes of CUSC Party, and therefore the principle of the Proposed Amendment received support. It was also felt that the Proposed Amendment would reinforce the intent of the applicable CUSC objectives by explicitly addressing the issue of non-discrimination during the process.
- 4.3 This view was countered by other Working Group members who did not believe that an explicit requirement in the CUSC could better facilitate the CUSC objectives and that any issues of discrimination were for the Authority to determine. One Working Group member noted that the Proposed Amendment would in effect add another objective to those defined in the Transmission Licence and therefore questioned how by adding a further objective the current CUSC objectives would be better facilitated. The point was also raised that the Competition Act could be used to determine discrimination and therefore it may not be appropriate for inclusion in the CUSC.
- 4.4 The Working Group considered the indicative text provided by the Proposer and felt that the drafting in some respects needed to be more facilitating and not impose more obligations. In particular it was noted that the indicative text included a new obligation on the Authority in its consideration of an amendment. The Working Group noted that it was not possible to implement this within CUSC and that the Authority had their own statutory duties which they were required to meet. On this basis consideration was given to an Alternative Amendment addressing the principle identified.

Summary of Working Group Discussion

- 4.5 The principle of the Proposed Amendment was supported by the majority of the Working Group. However there were strong diverse views regarding the detail outlined in the proposal and whether the proposal better facilitated the applicable CUSC objectives. The majority of the Working Group agreed that the Alternative Amendment developed by the Working Group better facilitated the applicable CUSC objectives.

5.0 Alternative Amendment

- 5.1 The Group discussed the detail of the indicative legal text provided by the Proposer. It was felt that the drafting needed to be more facilitating and not impose more obligations. The Working Group formulated some alternative text to follow the intent of the Proposal, which is presented as the Alternative Amendment.
- 5.2 The Group noted that they had been required by their Terms of Reference to consider an appropriate definition of non-discrimination for the purposes of the proposed change in order to avoid ambiguity in the requirements. It was concluded that it would not be appropriate to define the term or to place a requirement to consider non-discrimination.
- 5.3 The majority of the Group felt that the CUSC changes should be about the provision of information for the identification of the impact on all parties of an amendment proposal (i.e. 'winners' and 'losers'), rather than an absolute value judgement to determine whether there is undue discrimination.

6.0 Initial View of Amendments Panel

- 6.1 The view of the Amendments Panel on the way forward for CAP006 is that National Grid should initiate a period of wider consultation to seek industry views as to whether the Amendment Proposal or Alternative Amendment better facilitate achievement of the applicable CUSC objectives.

7.0 Initial View of National Grid

- 7.1 National Grid believes that Amendment Proposal CAP006 should not be implemented. This is on the basis that it would not better meet the applicable CUSC objectives to include a provision which may be ambiguous in its requirements. Any issues of non-discrimination should be an issue for the Authority to determine.
- 7.2 National Grid believe that the Alternative Amendment better facilitates the applicable CUSC objectives as compared with the Proposed Amendment. The Alternative Amendment recognises that the identification of the impact on all parties would better meet the objectives than the obligation to determine if there would be undue discrimination.

8.0 Views Invited

- 8.1 National Grid is seeking the views of interested parties relating to this Amendment Proposal CAP006.
- 8.2 Please send your responses to this consultation document to National Grid by no later than close of business on **28th March 2002.**

8.3 Please address all comments to the following e-mail address:

emma.groves@uk.ngrid.com

Or alternatively, comments may be addressed to:

Emma Groves
Commercial Development
National Grid Company plc
National Grid House
Kirby Corner Road
Coventry
CV4 8JY

Annex 1 - Proposed Text to Modify CUSC

Part A - Indicative Text by Proposer to give effect to the Proposed Amendment

1. Amendment Proposal

8.15.2 A proposal made pursuant to Paragraph 8.15.1 shall be submitted in writing and shall contain the following information in relation to such proposal:

- (j) where applicable, a statement to the effect that the Proposer has in preparing the Amendment Proposal ensured that the Amendment would not unduly discriminate against or unduly prefer any one or any group of persons or class or classes of persons.

2. Working Groups

8.17.8 The terms of reference of a **Working Group** must include provision in respect of the following matters:

(...)

- (e) an appropriate evaluation of each and any Proposal to ensure that the Amendment would not unduly discriminate against or unduly prefer any one or any group of persons or class or classes of persons.

3. Amendment Report

8.20.2 The matters to be included in an **Amendment Report** shall be the following (in respect of the **Amendment Proposal**):

- (l) an assessment of whether the Amendment Proposal and any Alternative Amendment would unduly discriminate against or unduly prefer any one or any group of persons or class or classes of persons.

4. Amendment Report

8.20.5 In accordance with the **Transmission Licence**, the **Authority** may approve the **Proposed Amendment** or an **Alternative Amendment** contained in the **Amendment Report** (which shall then be an "**Approved Amendment**" until implemented). If the **Authority** believes that the **Proposed Amendment** (or an **Alternative Amendment**, if any) would not better facilitate achievement of the **Applicable CUSC Objectives**, or would unduly discriminate against or unduly prefer any one or any group of persons or class or classes of persons, then there will be no approval. In such a case, **NGC** will notify **CUSC Parties** and will raise the issue at the next **Amendments Panel** meeting.

Part B – Text to give effect to the Alternative Amendment

N.B. It is noted that there are other Amendment Proposals being considered at this time which also propose changes to these paragraphs. The proposed text changes are therefore based on the CUSC as existing at this time.

1. Amendment Proposal

8.15.2 A proposal made pursuant to Paragraph 8.15.1 shall be submitted in writing and shall contain the following information in relation to such proposal:

- (j) where applicable, comments on the likely impacts on and the implications for CUSC parties in general (or classes of CUSC parties in general).
- (k) where appropriate, any other comments the proposer wishes to make in support of the proposal.

8.15.3 if a proposal fails in any material respect to provide the information in Paragraph 8.15.2 (excluding Paragraphs (e), (g), ~~and~~ (h) and (j) thereof), the Panel Secretary.....

2. Working Groups

8.17.8 The terms of reference of a **Working Group** must include provision in respect of the following matters:

(...)

- (e) where applicable, an evaluation of each and any Proposal to identify the likely impacts on and the implications for any CUSC parties in general (or classes of CUSC parties in general) of the Amendment.

3. Amendment Report

8.20.2 The matters to be included in an **Amendment Report** shall be the following (in respect of the **Amendment Proposal**):

- (l) where applicable, an assessment of the likely impacts on and the implications for any CUSC parties in general (or classes of CUSC parties in general) of the Amendment Proposal and any Alternative Amendment.

4. Amendment Report

8.20.5 No change to existing CUSC text.