



Direct Dial: 020-7901-7355

23 July 2003

The National Grid Company, CUSC Signatories and
Other Interested Parties

Your Ref: CAP002
Our Ref: IND/COD/CUSC/CAP002

Dear Colleague,

Amendment to the Connection and Use of System Code (“CUSC”) - Decision and Notice in relation to Proposed Amendment CAP002: “Paragraph 6.5.1”.

The Gas and Electricity Markets Authority (the “Authority”¹) has carefully considered the issues raised in the Amendment Report and the Addendum to the Amendment Report² in respect of Proposed Amendment CAP002 “Paragraph 6.5.1”.

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

- (i) Proposed Amendment CAP002 be approved with an implementation date of one month after the Authority’s decision or one month after the decision on the associated Grid Code changes, whichever is the later; and
- (ii) the Alternative Amendment be rejected.

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

This letter explains the background to Proposed Amendment CAP002, as set out in the Amendment Report and the Addendum to the Amendment Report, and sets out the Authority’s reasons for its decision.

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

² CAP002 Amendment Report dated 8 April 2002; Addendum to CAP002 Amendment Report dated 19 June 2002.

Background

Prior to the Energisation of the connection between a Power Station and its Distribution System, or the use by the Power Station of its Distribution System, certain contractual arrangements must be in place between the Power Station and NGC. These contractual arrangements are specified in paragraph 6.5.1 of the current version of the CUSC. NGC utilises the requirement for these contractual arrangements to be in place prior to Energisation to signal to it the presence of future Embedded Generation projects. This enables it to develop and maintain an efficient, coordinated and economical Transmission System.

Embedded Licence Exempt Generators (LEGs), however, are not required to have such contractual arrangements in place since they are not required to be a party to the CUSC Framework Agreement and therefore are not required to comply with the CUSC in its entirety. Paragraph 6.5.1 of the CUSC was codified from paragraph 2.5.1 of the MCUSA. When originally included in the MCUSA the threshold for the requirement for an Electricity Generation Licence was set at 10MW or greater (i.e. a Generator with a Registered Capacity below 10MW could apply for an exemption from the Electricity Generation Licence). However, this threshold was changed to 50MW in 1995 and 100MW in 2000. As a result of the changes to this threshold, the Proposer of Proposed Amendment CAP002 considered that the contractual arrangements specified in Paragraph 6.5.1 of the CUSC are not sufficient to provide NGC with the information it requires about requests for the connection of future Embedded Generation projects (that may or may not require a Generation Licence) that may have a material effect on NGC's Transmission System.

Proposed Amendment CAP002 was raised by NGC on 31 October 2001 and was submitted for consideration at the CUSC Amendments Panel Meeting on 9 November 2001. At that meeting, the Amendments Panel determined that a Working Group should be established to consider Proposed Amendment CAP002. During their consideration of the Proposed Amendment the Working Group formulated an Alternative Amendment. The Working Group Report for Proposed Amendment CAP002 was submitted for consideration at the January 2002 CUSC Panel Meeting where it was determined that the Working Group had met their Terms of Reference and the Working Group Report was approved. The CUSC Panel instructed NGC to initiate a period of wider industry consultation for Proposed Amendment CAP002 and the Alternative Amendment. A consultation paper was issued on 4 February 2002 with responses invited by 11 March 2002. The final Amendment Report was submitted to the Authority on 8 April 2002.

On 21 May 2002 Ofgem issued a letter to NGC in relation to the proposed implementation of Proposed Amendment CAP002. It was Ofgem's view that although the proposed implementation timescales were incorporated into the 'Implementation and Timescales' section of the CAP002 Amendment Report, the issue was not adequately consulted upon as part of NGC's formal consultation process. The Amendment Report stated that the Proposed Amendment should only apply to Embedded Generators that do not have a signed Connection Agreement with a Distribution Company at the date of implementation. NGC's consultation, however, did not refer to the absence of a Connection Agreement as a pre-condition for application of the amendment. Ofgem considered that this issue was of sufficient materiality to require that NGC initiate a period of re-consultation as soon as was practicable. A consultation paper was issued on 23 May 2002 with responses invited by 5 June 2002. An Addendum to the CAP002 Amendment Report was submitted to the Authority on 19 June 2002.

The Amendment Report advised that consequential Grid Code changes would be required and that these were being developed by NGC for consideration by the Grid Code Review Panel. The report to the Authority detailing the consequential Grid Code changes was submitted by NGC on 10 September 2002. Ofgem raised queries about part of the content of this report on 12 November 2002 and received a response from NGC on 31 March 2003.

The Proposed Amendment

Proposed Amendment CAP002 seeks to amend paragraph 6.5.1 of the CUSC such that, prior to the Energisation of the connection between a Power Station of 30MW Registered Capacity or greater and a Distribution System, or the Energisation of the connection between any Power Station and a Distribution System at the same voltage level as the Low Voltage (LV) side of the Grid Supply Point, the Distribution Company is required to obtain from NGC a statement of works required to the Transmission System and any User System to accommodate the Power Station and subsequent confirmation by NGC of the completion of these works.

It is the view of the Proposer that Proposed Amendment CAP002 would better facilitate achievement of the Applicable CUSC Objectives³ since it would allow NGC to identify unlicensed Power Stations that may have a material effect on its Transmission System at an early stage and therefore would better facilitate the efficient and co-ordinated development of its Transmission System. In addition, it is the view of the Proposer that the Proposed Amendment would simplify the contractual interfaces between Parties, offering Embedded Generators a single point of contact and a single contractual relationship with the Distribution Company, enabling NGC to better facilitate effective competition in the generation of electricity.

Alternative Amendment

It was the view of the Working Group that paragraph 6.5.1 of the CUSC required clarification and that, in principle, Proposed Amendment CAP002 would better facilitate achievement of the Applicable CUSC Objectives. However, the Working Group did not reach a consensus as to whether a Registered Capacity of 30MW was the appropriate threshold above which the Proposed Amendment should apply. A number of Working Group members considered that a Registered Capacity of 50MW was the appropriate threshold, since this would be consistent with other industry documents, for instance the Grid Code, whilst still being adequate to enable NGC to ascertain whether an Embedded Generator would have a material impact on the Transmission System.

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.

A number of Working Group members therefore formulated an Alternative Amendment, identical to the Proposed Amendment, with the exception that a Registered Capacity of 50MW was specified as the appropriate threshold above which the Alternative Amendment should apply.

Respondents' views

NGC issued a consultation paper on 4 February 2003 inviting views from CUSC Parties and interested parties.

NGC received 12 responses to the consultation in respect of Proposed Amendment CAP002, the majority of which agreed that the wording of paragraph 6.5.1 required clarification.

On the issue of connection arrangements, a majority of respondents welcomed the flexibility for Embedded Generators not to have to enter into a direct contractual relationship with NGC. However, one respondent considered that it was appropriate for Embedded Generators to enter into a direct contractual relationship with NGC as this would provide a route for NGC to be accountable to the Generator for any works required. One respondent supported the idea of reducing the need for Embedded Generators to liaise with NGC but considered that, where works were required to the Transmission System, NGC should seek a contractual relationship to address these concerns.

A number of respondents considered that the 'one-stop shop' arrangement did not go far enough. Further, one respondent noted that the arrangement should be universal to all Embedded Generators since the possibility that an agreement with NGC may also be required could create confusion. One respondent considered that the arrangement should apply to all Generators, irrespective of capacity or connection voltage. Two respondents raised concerns over how disputes associated with the Connection Offer could be taken forward if the Generator had no contractual relationship with NGC.

Some respondents considered that the 28 day timescale for NGC to provide a statement of any works to the Distribution Company for a proposed Embedded Generation connection was insufficient and that there should be a requirement on NGC to give an indication of timescales for any necessary reinforcement identified as well as details of the works. However, the majority of respondents supported the 28 day timescale.

A number of respondents raised concerns as to the increase in obligations and, potentially, costs associated with the Proposed Amendment.

A number of respondents considered that there should be a defined process of information transfer between the Distribution Companies and NGC to ensure that the requirements and expectations are transparent to all Parties.

As regards the impact on the Grid Code, three respondents considered that while there were wider issues and requirements that require streamlining by all Parties, changes to the Grid Code and/or the Distribution Code were not dependent on the Proposed Amendment. It was the view of one respondent that the information requirements of the Grid Code should be reviewed in the light of government policy on CHP and renewable generation, which would mean minimising the data requirements for connection, planning and operation.

On the issue of whether a 30MW or 50MW threshold was appropriate, one respondent considered that the 50MW threshold would be likely to result in Distribution Companies establishing their own levels for notification to NGC. It was the view of another respondent that a 30MW threshold could lead to interpretation by Distribution Companies as being the level at which the connection of an Embedded Generator would require work on the Transmission System. This respondent considered that this could lead to the view that the liability for the whole cost of any work should fall to the Embedded Generator, even though only part of it may be required for its connection. Two respondents considered that a 50MW threshold would be consistent with NGC's technical criteria for notification.

One respondent considered that NGC could request information about unlicensed Generators from Distribution Companies by using powers already contained in the CUSC. Also, it was the view of this respondent that, were Distribution Companies to adopt the principle of the Proposed Amendment as a policy in their Connection Offers, it would have the same effect in practice as implementation of the Proposed Amendment.

The respondents' views are summarised and contained in the Amendment Report in respect of Proposed Amendment CAP002.

NGC issued a further consultation paper on 23 May 2002 in respect of the implementation of Proposed Amendment CAP002, inviting views from CUSC Parties and interested parties.

NGC received 4 responses to this consultation. One respondent noted that implementation of either the Proposed Amendment or the Alternative Amendment should take place one month after the Authority's decision in line with the Working Group's recommendation. Another respondent noted that a recommendation to implement the Proposed Amendment 10 Business Days after the Authority's decision would need to recognise the existence of any incomplete Connection Offers and allow Parties to either complete their existing negotiations or enable them to convert to any revised arrangements. This respondent suggested a period of six months from the date of Authority decision be provided to allow for a period of structured transition.

On the issue of applicability, one respondent considered that it should apply to Embedded Generators without a Distribution Connection Agreement on the implementation date. Another respondent considered that financial commitment may be made prior to a Distribution Agreement being in place and therefore it would be more appropriate for the Proposed Amendment to apply to Embedded Generators that have not been made a Connection Offer by a Distribution Company.

The respondents' views are summarised and contained in the Addendum to the Amendment Report in respect of Proposed Amendment CAP002.

Amendments Panel Members' views

It was the view of the majority of Amendments Panel Members that the Alternative Amendment would better facilitate achievement of the Applicable CUSC Objectives as compared with the Proposed Amendment. In addition there was a minority of Amendments Panel Members that considered that the Proposed Amendment and the Alternative Amendment were unnecessary and therefore did not better facilitate achievement of the Applicable CUSC Objectives.

Some Amendments Panel Members considered that the issues addressed by the Proposed Amendment were part of a much larger review being undertaken within the industry, in particular concerning DTI/Ofgem initiatives to encourage smaller generators and renewable energy and that this should be borne in mind.

On the issue of the implementation of the Proposed Amendment or Alternative Amendment, some Amendments Panel Members emphasised that any implementation of the Proposed Amendment or the Alternative Amendment should not be retrospective and should only apply to those Embedded Generators that have not yet entered into a Connection Agreement with the Distribution Company at the time of implementation.

The respondents' views are summarised and contained in the Amendment Report and the Addendum to the Amendment Report in respect of Proposed Amendment CAP002.

NGC's recommendation

NGC recommended to the Authority that Proposed Amendment CAP002 be approved with an implementation date of one month after the Authority's decision or one month after the decision on the associated Grid Code changes, whichever is the later.

It was the view of NGC that the Proposed Amendment would resolve the current ambiguity of paragraph 6.5.1 of the CUSC and would enable NGC to discharge its statutory and Licence obligations to develop and maintain a co-ordinated and efficient Transmission System. Further, NGC considered that by improving transparency in the process for the development of Embedded Generation, Proposed Amendment CAP002 would ensure that the Transmission System is adequately designed to accept the connection of Embedded Generation, regardless of thresholds, and would avoid any possible discrimination between Parties. In this respect NGC considered that the Proposed Amendment would better facilitate effective competition in the generation and supply of electricity.

As regards connection arrangements, it was NGC's view that providing Embedded Generators with a less onerous process for connection, whilst enabling the timely notification of Embedded Generators to NGC, would represent the best way forward. NGC noted that neither the Proposed Amendment nor the Alternative Amendment precluded the option for an Embedded Generator to enter into a contractual relationship with NGC.

NGC also noted that the process for resolving disputes for any works identified would be very similar to that required under the existing arrangements. It was the view of NGC that currently works required and noted in the Bilateral Embedded Generator Agreement may require modification to the Bilateral Connection Agreement between NGC and the local Distribution Company and that resolution of any dispute may require tri-Party discussion. It was the view of NGC that this arrangement would not change.

On the issue of recovery of costs and discrimination, NGC did not consider that the capacity threshold for both the Amendment Proposal and the Alternative Amendment was a level set down for the purposes of charging. It was the view of NGC that the threshold is intended to enable consistency and transparency in the provision of information and as a consequence ensure that the transmission system is developed and designed in an adequate manner to meet NGC's Licence and statutory obligations. NGC considered that it was not the intent of the Proposed Amendment to affect the current charging arrangements and that, where works are identified which would impact on Distribution Companies' charges, there are existing mechanisms and processes to be followed between the Distribution Company and the Embedded Generator to address this issue.

NGC considered that the Proposed Amendment is not discriminatory in that similar arrangements apply for HV connected Power Stations. NGC considered that when HV connected Power Stations trigger works to the Distribution Companies' system or works at the Grid Supply Point they are charged in a similar manner to Embedded Generators by the affected party.

On the issue of the impact on the Grid Code, NGC noted that some Users did not consider that changes to the Grid Code are linked to the CUSC. With regard to this, it was the view of NGC that Paragraph 6.5.1 of the CUSC has been used to enforce the current Grid Code provisions on Medium Power Stations when they have applied for an exemption from the Electricity Generation Licence. NGC considered that in order to move to an enduring solution and to a situation where Medium Power Stations do not have to apply to be exempted, it was necessary for NGC to put in place alternative arrangements to enforce the existing Grid Code provisions and therefore believe that these issues are related.

On the issue of whether a Registered Capacity threshold was appropriate, NGC noted that a threshold was required to operate a safe and compliant Transmission System and was also required to ensure that the Transmission System is compliant and safe prior to the connection of an Embedded Generator. It was the view of NGC that a threshold of 30MW was more appropriate from a technical perspective. NGC considered that if a higher level was chosen then there may be occasions where a smaller Embedded Power Station may trigger works and that this could require Distribution Companies to set their own internal threshold to ensure that they were not exposed to unexpected works and could also lead to potentially unsafe or insecure scenarios to occur on the Transmission System.

On the issue of the implementation of the Proposed Amendment or Alternative Amendment, NGC noted the view of one respondent that any change should apply to all Embedded Generators not having a Connection Agreement with a Distribution Company at the date of implementation. It was the view of NGC that this is a suitable and transparent means to implement either the Proposed Amendment or Alternative Amendment.

NGC did not consider that financial commitment, as compared with a Distribution Agreement being in place, was the appropriate trigger for application of the Proposed Amendment or the Alternative Amendment since it would not provide transparency to all Parties or a clear implementation process.

Ofgem's view

Ofgem considers, having had regard to the Applicable CUSC Objectives and its statutory duties, that Proposed Amendment CAP002 and the Alternative Amendment, as set out in the Amendment Report and the Addendum to the Amendment Report, would not better facilitate achievement of the Applicable CUSC Objectives.

Impact of Approved Alternative Amendment CAP043 on Proposed Amendment CAP002 and the Alternative Amendment

In considering whether the Proposed Amendment and the Alternative Amendment would better facilitate achievement of the Applicable CUSC Objectives, Ofgem has had to have regard to the effects of Alternative Amendment CAP043, which was approved by the Authority on 6 February 2003 and was implemented on 1 April 2003. One of the changes introduced by Alternative Amendment CAP043 was to introduce two new products within the CUSC, Connection Entry Capacity and Transmission Entry Capacity, which replaced Registered Capacity and Maximum Export Capacity, both of which were removed from the CUSC.

In respect of the Proposed Amendment and the Alternative Amendment, however, both the legal texts submitted to give effect to these amendments were drafted prior to Authority approval of Alternative Amendment CAP043. As a consequence of this, both the Proposed Amendment and the Alternative Amendment still utilise the term Registered Capacity. Ofgem therefore considers that Authority approval of Alternative Amendment CAP043 changed the CUSC baseline against which the Proposed Amendment and the Alternative Amendment were submitted and, as a consequence, Ofgem considers that neither the Proposed Amendment nor the Alternative Amendment can be implemented. It is therefore Ofgem's view that the Proposed Amendment and the Alternative Amendment would not better facilitate achievement of the Applicable CUSC Objectives.

The nature and purpose of Proposed Amendment CAP002 and the Alternative Amendment

Although it is Ofgem's view that the Proposed Amendment and the Alternative Amendment cannot be implemented and therefore would not better facilitate achievement of the Applicable CUSC Objectives, Ofgem is able to comment on the nature and purpose of these amendments.

One of the benefits of the Proposed Amendment and the Alternative Amendment that was identified by the Working Group and by respondents to the consultation is that either of the amendments proposed would remove the obligation on an Embedded Generator developer to enter into a contractual relationship with NGC. It has been recognised that a likely result of this is that Distribution Companies will provide a single point of contact for Embedded Generators for all matters relating to new Generation connections to Distribution Systems.

If either the Proposed Amendment or the Alternative Amendment were approved then each Distribution Company would be expected to carry out an additional administrative role in providing NGC with information about Generators above a defined threshold level with a request for a statement of works that would be required on the Transmission System as a consequence of the proposed Embedded Generator connection. Ofgem notes that, as Distribution Systems are connected to the Transmission System, there is already an established interface between each Distribution Company and NGC with regular contact for other planning and operational purposes. Ofgem also notes that under the existing regulatory framework⁴ the costs of such an administrative role would be recovered from the customer making the application for a new Generation connection.

Ofgem considers that not every Embedded Generator connection would require works on the Transmission System and that when such works are not required then the additional work for the Distribution Company would be minimal. It is noted that NGC's statement of works would not describe the works required on the Transmission System in detail. Therefore it would be necessary for the Distribution Company, for example, to reference the fact that works are required on the Transmission System and advise on the applicable process for requesting details of these works in the offer of connection it makes to the customer.

Ofgem notes some that respondents to the consultation considered that the scope of NGC's statement of works is inadequate and that it should be extended to provide more information about any works that are required on the Transmission System. Ofgem accepts that there is a need to balance the scope of the statement of works with the 28 day timescale and also notes that NGC is not proposing to charge applicants for a statement of works. Ofgem considers that a developer would be in a reasonable position to estimate risks associated with an offer of connection to a Distribution System from knowledge that works would be needed on the Transmission System.

Some respondents raised concerns about the suitability of the proposed arrangements for disputes that may arise with an offer of connection to a Distribution System that also required works on a Transmission System to be carried out. Ofgem considers that disputes could be resolved under the existing arrangements but recognises that at an early stage tripartite discussions (between the Generator, Distribution Company and NGC) would be more efficient than separate bilateral discussions.

Ofgem notes the concern expressed by Generators that the threshold in the CUSC may be used by the Distribution Company as a threshold at which a Generator would be deemed to have triggered reinforcement works. Ofgem considers that it is reasonable for charges for works on the Transmission System to be met by the party or parties who cause the works to be required. Ofgem also notes that the capability of any network varies depending on geographic location as a consequence of customer density and type. Ofgem considers that a single threshold figure for allocation of charges that is not linked to the capability of the existing network would be unreasonable and as such is unlikely to accept the use of a threshold defined for information exchange as a justification for the allocation of charges to any party.

⁴ It should be noted that this framework is currently under review and is linked to Ofgem's wider review relating to the Distribution Price Control.

NGC considered that paragraph 6.5.1 of the CUSC allows it to enforce certain obligations on Medium Embedded Power Stations specified in the Grid Code. Both the Proposed Amendment and the Alternative Amendment would remove this right from NGC and as a consequence NGC considers that it would be unable in future to directly enforce these parts of the Grid Code in relation to Licence Exempt Medium Embedded Power Stations. Ofgem notes that there is work progressing through the Grid and Distribution Code Review Panels in light of the wider changes that have been triggered by the government targets relating to renewable generation. Ofgem is supportive of the Panels' progressing work in this area but considers that it is not directly relevant to its consideration of the Proposed Amendment and the Alternative Amendment.

Ofgem notes that the only difference between the Proposed Amendment and the Alternative Amendment is the size of Generator enquiries for which the Distribution Company is obliged to request a statement of works from NGC. The Proposed Amendment was submitted by NGC but was not supported by the CUSC Amendments Panel. The Alternative Amendment was identified by a number of Working Group members and is supported by a majority of Amendments Panel Members but not by NGC. Ofgem has reviewed the evidence that NGC provided in the Amendment Report and to the Working Group and does not consider that sufficient justification has been provided to support a threshold level of 30MW. Ofgem also notes that the Alternative Amendment would not prevent Distribution Companies from seeking a statement of works from NGC for Embedded Generator connection applications below the threshold in the CUSC. Ofgem therefore considers that, in principle, a threshold level of 50MW would be the most appropriate option.

The Authority's Decision

The Authority has therefore decided not to direct that Proposed Amendment CAP002 or the Alternative Amendment, as set out in the Amendment Report and the Addendum to 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 that reads "John Scott". The signature is written in a cursive style with a horizontal line underneath the name.

John Scott
Technical Director

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