



National Grid

AMENDMENT REPORT

CUSC Proposed Amendment CAP008

Codification Errors

**The purpose of this document is for
submission to the Authority to assist
in their decision on CAP008**

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Prepared by	National Grid

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II CONTENTS TABLE

I DOCUMENT CONTROL 2

 a National Grid Document Location 2

 b Document Location..... 2

 c Distribution 2

II CONTENTS TABLE 3

1.0 SUMMARY AND RECOMMENDATION..... 4

2.0 PURPOSE AND SCOPE OF THE REPORT 5

3.0 THE PROPOSED AMENDMENT 5

4.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES..... 5

5.0 IMPACT ON THE CUSC 6

6.0 IMPACT ON CUSC PARTIES 6

7.0 IMPACT ON CORE INDUSTRY DOCUMENTS..... 6

8.0 IMPLEMENTATION AND TIMESCALES 6

9.0 SUMMARY OF VIEWS AND REPRESENTATIONS 7

10.0 SUMMARY OF PANEL MEMBERS VIEWS..... 8

11.0 NATIONAL GRID RECOMMENDATION 8

ANNEX 1 - AMENDMENT PROPOSAL FORM..... 9

ANNEX 2 – COPIES OF REPRESENTATIONS RECEIVED 13

1.0 SUMMARY AND RECOMMENDATION

- 1.1 CAP008 proposes to provide a mechanism in the CUSC for the correction of any “codification errors” that might be identified in the future as having arisen from the process of migration from the MCUSA to the CUSC.
- 1.2 Amendment Proposal CAP008 was proposed by British Energy, with support from other Parties (as detailed in the Amendment Proposal form, contained in Annex 1) and was submitted for consideration to the CUSC Amendments Panel Meeting on 9th November 2001. At the meeting, the Panel determined that a Working Group should be established to consider the Proposal
- 1.3 The Governance Amendments Working Group (GAWG) were unable, as a group, to reach unanimous agreement in their evaluation of CAP008. There was some support within the Group for the issue raised by the Proposal, but the Working Group noted that the effect of the Proposed Amendment would be to set the Applicable CUSC Objectives to one side in the case of codification errors. The view National Grid, that the Proposal must fail, was not supported by all members of the Working Group. There were diverse views on the principle of the Proposed Amendment and the Working Group did not identify an Alternative Amendment.
- 1.4 The Working Group Report for CAP008 was submitted for consideration at the February 2002 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 National Grid to initiate a period of wider industry consultation for the Amendment Proposal.
- 1.5 The Consultation Paper for CAP008 was published by National Grid on the CUSC website and copies sent to CUSC Parties and Core Industry Document Owners. Responses to the CAP008 Consultation were invited by 8th April 2002.
- 1.6 National Grid received a total of 7 responses to the consultation for CAP008, of which 4 supported Rejection and 3 supported Approval of the Proposed Amendment. A summary of responses is contained in Section 9 of this document, with full copies of each response attached as Annex 2.

National Grid Recommendation

- 1.7 National Grid recommends that the Proposed Amendment be rejected on the basis that it does not better facilitate achievement of the Applicable CUSC Objectives.

2.0 PURPOSE AND SCOPE OF THE REPORT

- 2.1 This Amendment Report has been issued by National Grid under the rules and procedures specified in the Connection and Use of System Code (CUSC) as designated by the Secretary of State. Section 8.20 of the CUSC sets out the mandatory information to be contained in an Amendment Report.
- 2.2 This document details the nature of the CUSC changes proposed by CAP008 and includes the recommendation of National Grid. It also includes an indication of issues which arose from the industry consultation, and a summary of views from Panel Members. Copies of each of the responses to the consultation are included as Annex 2 to this document.

3.0 THE PROPOSED AMENDMENT

- 3.1 CAP008 proposes the introduction of a method to correct any codification errors that are unintended changes in effect arising from the migration process from the Master Connection and Use of System Agreement (MCUSA) to the CUSC which may only emerge on the future operation of the CUSC. It proposes to establish the concept of codification errors in order to permit specific categories of amendment to be addressed and rectified.
- 3.2 CAP008 would require amendment to Section 10 of the CUSC – “Transitional Issues”, to provide for the recognition and correction of such codification errors with the content of the CUSC (at the CUSC Implementation Date) which, when compared with the MCUSA source documentation, give rise to a different effect as a result of the interpretation applied.

4.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

- 4.1 In relation to CAP008, which proposes changes to Section 10 of the CUSC – Transitional Issues, the objectives of Paragraph 1 of Licence Condition C7F of the Transmission Licence is the relevant objective. However, the Proposed Amendment also proposes to set aside the modification procedures as set out by the Transmission Licence by creating a new category of change that may be implemented directly without reference to the relevant objectives. Therefore the Proposed Amendment also relates to the objectives of Paragraph 6 of Licence Condition C7F.
- 4.2 Several Working Group members did not support the Proposed Amendment as it would set aside the Applicable CUSC Objectives for certain categories of CUSC change (Codification Errors). It was argued that it would not be possible for the Proposed Amendment to better facilitate achievement of the Applicable CUSC Objectives as it proposes to set them aside, and therefore CAP008 could not be supported. In addition there was a view that there were existing provisions for amendment within the CUSC which should be exercised where differences are identified between the MCUSA and the CUSC. This would enable such errors to be presented and assessed against the Applicable CUSC Objectives, so that if the amendment of a codification error better met the objectives it would be made, and conversely, if it did not better meet the objectives it would not be made.
- 4.3 Supporters of the Proposed Amendment argued that by acknowledging the issue now and providing a process for its management it would avoid excessive time and resource at a later date if and when such errors were found, and hence

the Proposed Amendment would better achieve the Applicable CUSC Objectives on the grounds of efficiency.

- 4.4 The Proposer of CAP008 noted the 'letters of comfort' that had been offered to CUSC Parties for the bilateral agreements, and put forward the view that the Proposed Amendment would extend this arrangement into the body of the CUSC to provide further assurance.
- 4.5 There was some concern within the Working Group about the process of dealing with codification errors. Questions were raised regarding the identification and agreement of what would constitute such a codification error, which would also need to be agreed by all parties and set out in the CUSC. Some Working Group members were also concerned as to what the appropriate objectives would be, if any, against which codification errors would be assessed.
- 4.6 Some Working Group members raised issues of how a codification error would interact with other live or historic CUSC Amendments. It was argued that as the CUSC is a live document, rectification of a codification error may not 'fit' with any revised versions. This would cause uncertainty to Users and new entrants, who would need to be aware of both the CUSC and the MCUSA in order to understand how their rights and obligations might change in the future.

5.0 IMPACT ON THE CUSC

- 5.1 The Proposed Amendment would require amendment of Section 10 of the CUSC – "Transitional Issues". A definition will also be required for Codification Errors, which may require changes to Section 11 – "Interpretation and Definitions". In addition, significant changes to Section 8 – "CUSC Amendment", may be required in order to incorporate a detailed process for dealing with any codification errors that might at some point in the future be identified.

6.0 IMPACT ON CUSC PARTIES

- 6.1 The Proposed Amendment would allow codification errors to be amended without regard to the Applicable CUSC Objectives, which could have a detrimental effect on CUSC Parties, for which there would be no process of determination.

7.0 IMPACT ON CORE INDUSTRY DOCUMENTS

- 7.1 It is envisaged that the Proposed Amendment will have no impact on Core Industry Documents or other industry documentation.

8.0 IMPLEMENTATION AND TIMESCALES

- 8.1 Given the significant changes to the CUSC and possible further CUSC Amendments to implement CAP008 and incorporate a process for dealing with possible future codification errors, the timescales for any implementation of CAP008 is as directed by the Authority.

9.0 SUMMARY OF VIEWS AND REPRESENTATIONS

9.1 This Section contains a summary of the views and representations made by consultees during the consultation period in respect of the Proposed Amendment and the Alternative Amendment.

View of Panel Members

9.2 No formal responses have been submitted to the consultation by members of the Amendments Panel.

Core Industry Document Owners

9.3 No responses have been submitted by Core Industry Document Owners to the wider industry consultation carried out for CAP008.

Responses to Consultation

9.4 The following table provides an overview of the representations received. Copies of the representations are attached as Annex 2.

Reference	Company	Supportive	Comments
CAP008-CR-01	TXU Europe Energy Trading Ltd	No	Should be a matter for Ofgem.
CAP008-CR-02	Elxon Ltd	No	Concern over removal of link to Applicable CUSC Objectives
CAP008-CR-03	Powergen UK plc	No	Believe all CUSC changes should continue to be judged against Applicable CUSC Objectives
CAP008-CR-04	EdF Trading Ltd & EdF Generation	Yes	Believe that removal of any correction of a codification error should have to meet the Applicable CUSC Objectives, not the initial correction
CAP008-CR-05	British Gas Trading Ltd	No	Believe that CUSC is the definitive contractual position and that CAP008 must fail unless the Applicable CUSC Objectives are changed
CAP008-CR-06	British Energy	Yes	Believe that CAP008 would satisfy the 'efficient discharge' Licence obligation on NGC.
CAP008-CR-07	London Electricity Group	Yes	Believe that the CAP008 sets a level playing field for those parties who have a letter of comfort and those who do not

9.5 National Grid received a total of 7 responses to the consultation on CUSC Amendment CAP004. Of the total responses, 4 supported Rejection and 3 supported Approval of the Proposed Amendment.

9.6 The views of respondents in support of rejection of the Proposed Amendment raised concerns over the removal of the link between changes to the CUSC and the Applicable CUSC Objectives, and it was believed that the Proposed Amendment must fail as it is proposing to set aside the Applicable CUSC Objectives and therefore would require the objectives themselves to be changed. These respondents felt that Ofgem would be the correct body to determine whether changes were intentional or unintentional if a potential codification error is flagged up.

- 9.7 In support of Approval, one respondent believed that the Proposed Amendment would satisfy the 'efficient discharge' Licence obligation on National Grid, and hence facilitate the Applicable CUSC Objectives. Another respondent felt that the correction of a codification error should not have to meet the Applicable CUSC Objectives, but that any subsequent removal should.
- 9.8 Two respondents who supported Rejection, raised concerns over the process of migration from the MCUSA to the CUSC and the CUSC implementation timescales. One respondent felt that provision for codification errors should have been incorporated into the CUSC from implementation, but given tight timescales, was not. One respondent felt that the timescales for implementation of the CUSC had been tight and therefore the likelihood of such codification errors occurring was high.
- 9.9 Two respondents referred to the 'letters of comfort' that had been provided by National Grid to Users in respect of their Bilateral and Construction Agreements, one of the respondents felt that the Proposed Amendment would extend these into the main body of the CUSC. One respondent felt that the Proposed Amendment would set a level playing field for the treatment of codification errors between those parties who have a 'letter of comfort' and those who do not.
- 9.10 National Grid note the responses in support of Rejection of the Proposed Amendment and concur with concerns over how differences in interpretation would be resolved and how such errors would be judged.
- 9.11 Regarding the removal of the link with the Applicable CUSC Objectives, National Grid believe that the Proposed Amendment could have a detrimental effect on CUSC Parties and therefore the Proposed Amendment cannot better facilitate effective competition or the efficient discharge element of National Grid's Transmission Licence condition.
- 9.12 National Grid also believe that the existing process for amendment of the CUSC as set out in Section 8 is the manner in which any changes to the CUSC may be progressed, as it allows for assessment against the relevant objectives and also assessment of the impact on parties.

10.0 SUMMARY OF PANEL MEMBERS VIEWS

- 10.1 On the basis of the consultation and assessment undertaken in respect of CUSC Amendment Proposal CAP008, the majority of those CUSC Amendments Panel Members expressing a view considered that the Amendment Proposal be rejected. Three CUSC Amendments Panel members supported the approval of the Proposal.

11.0 NATIONAL GRID RECOMMENDATION

- 11.1 National Grid recommend Rejection of the Proposed Amendment. This is on the basis that it is not possible for the Proposed Amendment to better facilitate the Applicable CUSC Objectives as it is proposing that they be set aside for certain CUSC changes. National Grid believe that the CUSC already contains provision for amendment, set out in Section 8, and therefore any differences identified between the MCUSA and the CUSC may progress using this process, where they can be properly assessed against the Applicable CUSC Objectives and can be approved or rejected on that basis.

Annex 1 - Amendment Proposal Form

Those wishing to propose an Amendment to the CUSC should do so by filling in this "Amendment Proposal Form" that is based on the provisions contained in Section 8.15 of the CUSC. The form seeks to ascertain details about the Amendment Proposal so that the CUSC Panel can determine more clearly whether the proposal should be considered by a Working Group or go straight to wider National Grid Consultation.

The Panel Secretary will check that the form has been completed, in accordance with the requirements of the CUSC, prior to submitting it to the Panel. If the Panel Secretary accepts the Amendment Proposal form as complete, then he will write back to the Proposer informing him of the reference number for the Amendment Proposal and the date on which the Proposal will be considered by the Panel. If, in the opinion of the Panel Secretary, the form fails to provide the information required in the CUSC, then he may reject the Proposal. The Panel Secretary will inform the Proposer of the rejection and report the matter to the Panel at their next meeting. The Panel can reverse the Panel Secretary's decision and if this happens the Proposer will be informed by the Panel Secretary.

The completed form should be returned to:

Mark Cox
Panel Secretary
Commercial Development
National Grid Company plc
National Grid House
Kirby Corner Road
Coventry, CV4 8JY

Or via e-mail to:

CUSC.Team@uk.ngrid.com

(Participants submitting this form by email will need to send a statement to the effect that the proposer acknowledges that on acceptance of the proposal for consideration by the Amendments Panel, a proposer which is not a CUSC Party shall grant a licence in accordance with Paragraph 8.15.7 of the CUSC. A Proposer which is a CUSC Party shall be deemed to have granted this Licence.)

Proposers Name:

(Name of party making the proposal. An Amendment Proposal may be made by a CUSC Party, a BSC Party or by "energywatch")

British Energy Generation Limited

Proposers Representative:

(The name of the person representing the Proposer (and his alternate) for the purposes of the Amendment Process)

Steve Phillips (or alternate John Capener)

Organisations Name and Address:

(Organisation on whose behalf the Amendment is proposed)

British Energy Generation Limited, Barnett Way, Barnwood, Gloucester, GL4 3RS

In addition to BEGL, the following CUSC Parties listed alphabetically below are joint sponsors for this Amendment Proposal:

1. AES Drax Power Limited Selby, North Yorkshire, YO8 8PQ
2. Barking Power Ltd Barking Power Station, Chequers Lane, Dagenham, RM6 6PF
3. Deeside Power Development Company Ltd, Senator House, 85 Queen Victoria Street, London EC4V 4DP
4. Enron Direct Limited Enron House, 40 Grosvenor Place, London, SW1X 7EN
5. First Hydro Company Bala House, Lakeside Business Village, St. David's Park, Deeside, Flintshire, CH5 3XJ
6. Humber Power Limited South Humber Bank Power Station, South Marsh Road, Stallingborough, North East Lincolnshire, DN41 8BZ
7. Teesside Power Limited Dunedin House, Columbia Drive, Thornaby, Stockton On Tees, Cleveland, TS17 6 BJ

Capacity in which the Organisation Proposes to make an Amendment:

(i.e. CUSC Party, BSC Party or "energywatch")

CUSC Party

Description of the issue or defect which the proposed Amendment seeks to address:

(This should be in reasonable, but not excessive detail)

There is a potential for codification errors which are unintended changes in effect which arise from the migration process from the MCUSA to CUSC and which only emerge in the future while the CUSC is in operation.

Description of the proposed Amendment and of its nature and purpose:

(This should be in reasonable but not excessive detail)

To recognise the potential existence of and provide for the correction of each and any "codification errors" which arise in the future and are associated with the process of migration from the MCUSA to CUSC.

An indication of those parts of the CUSC which would require amendment in order to give effect to (or would otherwise be affected by) the proposed amendment and an indication of the nature of those amendments or effects.

(This should be given where possible)

Please refer to the attachment for suggested, indicative changes/additions to be incorporated to appropriate paragraphs of section 10 of the CUSC to give effect to the proposed amendment.

Please note that it is the principle of the Amendment Proposal that is to be reviewed and approved by an appropriate review/consultation process to be determined by the CUSC Amendment Panel.

This indicative text is a suggested solution which may or may not be considered exhaustive in its detail and scope.

Reasons why the Proposer believes that the proposed Amendment would better facilitate achievement of the Applicable CUSC Objectives as compared with the current version of the CUSC with background information in support thereof.

The Proposer considers that the proposed amendment would better facilitate the achievement of the applicable CUSC Objectives since it would better facilitate the efficient discharge by NGC of its obligations under the Act and the Transmission Licence.

In addition the Proposer considers that this Amendment Proposal (AP) would accord with repeated assurances given during the development of the CUSC that the intention of the Code was to replicate the existing arrangements except in a number of clearly defined instances. However, it should be noted that for this specific AP, the Proposer does not regard the requirement to "better facilitate achievement of the Applicable CUSC Objectives" as the correct criteria against which this AP should be measured.

The issue is one of ensuring that there is an appropriate acknowledgement and recognition within the Transitional Issues (section 10) that in the preparation and migration from MCUSA to CUSC there may be some differences identified in the future which are associated with the content of the CUSC (as at the CUSC Implementation Date) which when compared with the original MCUSA source documentation results in a different conclusion as a consequence of the interpretation applied.

Inclusion of this 'Codification Error' amendment proposal provides safeguards for both NGC and CUSC Parties by establishing the concept of "Codification Errors" and permits this specific category of amendments to be addressed and rectified. It will also permit the correction of any erroneous and/or deleterious effects on those CUSC Parties who were previously MCUSA signatories at the CUSC Implementation Date.

Identification of this category of issues and resolution should be provided for within the Amendments review process and it is envisaged that any permitted party should be able to raise an appropriate Amendment Proposal to enable the "codification error" to be formally reviewed and assessed thus creating increased transparency to the benefit of all CUSC Parties. This amendment category would also bring the CUSC amendment process into line with best regulatory practice of correcting errors and would facilitate the reduction of regulatory uncertainty and increased confidence in both CUSC design and its processes.

An indication of the impact of the proposed Amendment on Core Industry Documents.

(This should be given where possible)

None

An indication of the impact of the proposed Amendment on relevant computer systems and processes used by CUSC Parties.

(This should be given where possible)

None

A statement to the effect that the Proposer acknowledges that on acceptance of the proposal for consideration by the Amendments Panel a Proposer shall grant a Licence in accordance with Clause 8.15.7 of the CUSC.

(A signature to this effect must be given by a Proposer, which is not a CUSC Party)

Proposer is a CUSC Party.

Attachment to Amendment Proposal

CODIFICATION ERRORS

10.13 CODIFICATION ERROR

Where there is a difference in effect between the provisions of the CUSC and the documents in force immediately prior to the CUSC Implementation Date which were amended to form the CUSC, which is not a difference intended to result from the Designation of the CUSC (examples of which are the intentional changes made to governance and dispute resolution) and which is not a difference due to an amendment to the CUSC occurring after the CUSC Implementation Date, the provisions of the CUSC shall be amended to correct such difference (the "**codification error**").

Note: In addition to the above proposed definition of a Codification Error, there is a requirement to establish a process to facilitate a transparent review and resolution of each and any such arising within the CUSC Amendment process.

Annex 2 – Copies of Representations Received

This Annex includes copies of any representations received following circulation of the Consultation Document (circulated on 6th March 2002, requesting comments by close of business on 8th April 2002).

Representations were received from the following parties:

No.	Company	File Number
1	TXU Europe Energy Trading Ltd	CAP008-CR-01
2	Elexon Ltd	CAP008-CR-02
3	Powergen UK plc	CAP008-CR-03
4	EdF Trading Ltd & EdF (Generation)	CAP008-CR-04
5	British Gas Trading Ltd	CAP008-CR-05
6	British Energy	CAP008-CR-06
7	London Electricity Group	CAP008-CR-07

Reference	CAP008-CR-01
Company	TXU Europe Energy Trading Ltd

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

TXU Europe Energy Trading Ltd
Wherstead Park
Wherstead
Ipswich
Suffolk
IP9 2AQ

15^h March 2002

CAP008 Consultation Response

Dear Emma

Like the majority of the Working Group, we sympathise with the intent of the Amendment Proposal and for similar reasons we do not believe that it can be argued that it better achieves the relevant objectives. The CUSC was imposed on the Industry by Ofgem determining the changes to the MCUSA which transformed it into the CUSC (very few signed onto it willingly). Whether changes were intentional or unintentional seems to us to be a matter for Ofgem to argue about as or when someone proposes an Amendment that they believe was an "error".

In summary we do not believe that the Amendment should be made.

Yours sincerely

Philip Russell
Market Development Manager
For and on behalf of the 21 TXU CUSC Parties

Reference	CAP008-CR-02
Company	Elexon Ltd

Our ref. Comments on CAP008
Your ref. CAP008



2 April 2002

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

(By email to: emma.groves@uk.ngrid.com)

Dear Ms Groves,

Comments on Consultation Paper CAP008 Codification Errors

ELEXON acting as the Balancing and Settlement Code Company has reviewed the Consultation Paper CAP008. ELEXON would like to make the following observations regarding the 'Proposed Amendment' to the inclusion of a process to manage 'Codification Errors' within CUSC.

ELEXON supports the principle of the 'Proposed Amendment' as 'Codification Errors' should be progressed in an efficient manner. However, ELEXON have concerns that:

- (a) the cost implications of including a process in the CUSC to deal with Codification errors; and
- (b) the removal of the link to the Applicable CUSC objectives.

Therefore, on balance ELEXON does not support the 'Proposed Amendment' and does not believe that CAP008 better facilitates the applicable CUSC objectives by including a defined process for Codification Errors in the CUSC.

Under the BSC, the Panel raised Modification Proposal P46, 'Housekeeping Modification' to rectify a number of minor inconsistencies, manifest errors and minor consequential changes to the BSC. This Modification Proposal enabled a large number of 'housekeeping' changes to be bundled together so they could be progressed quickly and in an efficient manner by the BSC Panel. A similar process under the CUSC may be more appropriate for 'Codification Errors'.

Yours sincerely

Justin Andrews
ELEXON Trading Department

Reference	CAP008-CR-03
Company	Powergen UK plc

Jane Butterfield
Strategy and Regulation



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

8th April 2002
Reference

Dear Emma

Powergen Comments on Amendment Proposal Codification Errors - CAP008

Powergen UK plc ('Powergen') welcomes the opportunity to comment on the above consultation document published on 6th March 2002. Powergen provides this response on behalf of itself and the following Parties: Powergen Retail Ltd, Diamond Power Generation Limited and Cottam Development Centre Limited.

Whilst we understand the proposer's reasons for raising CAP008, we feel that it is likely to prove problematic to implement in practice. We therefore do not support the proposal.

We believe that it is important that all proposed changes to the CUSC continue to be judged on the basis of whether or not they better meet the applicable CUSC objectives. The issues we perceive with CAP008 are:

It may be difficult to judge whether a change was in fact a codification error or a change required as a result of the new market arrangements. How would disagreements in interpretation be resolved?

Even if it can be agreed that a change was a codification error, it is not clear that the correct thing to do is to amend it ignoring the effect on the applicable CUSC objectives.

If it is felt that the present amendment process is too unwieldy to change small uncontroversial errors to the CUSC, we would suggest that a number of these are batched together into one amendment proposal. This can then be processed using the existing process allowing consideration of the implications for the applicable CUSC objectives.

Please contact me on 024 7642 4414 should you wish to discuss further.

Yours Sincerely,

Jane Butterfield
Strategy & Regulation Department
Energy Trading
Powergen

Powergen UK plc
Westwood Way
Westwood Business Park
Coventry
CV4 8LG

T +44 (0) 24 7642 4000
F +44 (0) 24 7642 5432

www.powergenplc.com

Reference	CAP008-CR-04
Company	EdF Trading Ltd & EdF (Generation)

From: Steve Drummond [Steve.Drummond@btopenworld.com]
Sent: 02 April 2002 18:06
To: Groves, Emma
Cc: <mailto:saeed.patel@edftrading.com>
Subject: CAP008 Codification Errors – Consultation Document

On behalf of EdF Trading Ltd and EdF (Generation) can it please be noted that it is our belief that CAP008 should be adopted.

The CUSC was supposed to faithfully codify the MCUSA except for changes that had to be made to bring NETA into effect. As a consequence, if there were found to be errors in CUSC because of a failure in transposing the MCUSA terms, then the correction of such errors should not need to satisfy the 'Objectives' criteria. Moreover, it should be their subsequent removal (if that was what was wanted) that should have to satisfy the test and be the subject of an Amendment Proposal.

Regards

Steve Drummond
UK Market Adviser to EdF Energy Merchants Ltd

Reference	CAP008-CR-05
Company	British Gas Trading Ltd

word/cusc



energy management group

National Grid Company plc
National Grid House
Kirby Corner Road
Coventry
CV4 8JY

Charter Court
50 Windsor Road
Slough
Berkshire
SL1 2HA

For the Attention of Ms E Groves
- Commercial Development

Tel. (01753) 758051
Fax (01753) 758170
Our Ref. Cap008
Your Ref.
8th April 2002

Dear Emma,

**Re: CUSC Amendment CAP008 – Codification Errors
Consultation Document**

Thank you for the opportunity to comment on the Consultation Document in respect of the above Amendment Proposal. This response is submitted on behalf of British Gas Trading Limited (BGT), Centrica KL and Centrica PB. BGT has been involved in the Workgroup discussions surrounding the proposal and supports the view expressed by National Grid in para 6.1 of the document, that unless the relevant objectives by which Amendment Proposals are judged, are changed (through a modification to NGC's Licence) then this Proposal must fail. We therefore do not support this Amendment Proposal.

BGT believes that the CUSC, as designated by the Secretary of State and acceded to by players, is now the definitive contractual position. It is therefore unrealistic that changes could be made solely on the basis that the previous agreement contained a different provision. We therefore do not support this Amendment Proposal on its merits either.

Should you have any queries regarding this response, please do not hesitate to contact me.

Yours sincerely,

Simon Goldring
Transportation Manager



Reference	CAP008-CR-06
Company	British Energy

8th April 2002

Emma Groves
Commercial Development
The National Grid Company plc
Kirby Corner Road
COVENTRY
CV4 8JY

Dear

CUSC Consultation Document CAP008: Codification Errors

Thank you for the opportunity to comment on the above consultation document. We would advise that we fully SUPPORT the early approval and implementation of the Amendment Proposal (AP).

- The incorporation of ‘codification errors’ into the Transitional Issues section of the CUSC is required to satisfy the ‘efficient discharge’ CUSC licence obligation on NGC to ensure the issue is formally registered within CUSC and thus allow future Amendment Proposals to be raised and managed internal to CUSC.
- Without incorporation, there is no suitable process or mechanism defined for such disputes arising from codification, (and which have a material effect and are detrimental to the User’s prevailing rights and obligations under the MCUSA), from MCUSA into CUSC and its supporting agreements, schedules, exhibits, supporting methodologies and statements to resolve internal to CUSC.
- Following representations from a number of Users late during the development of CUSC, NGC recognised the potential for errors arising from codification, and made available ‘letters of comfort’ associated with the replacement Bilateral and Construction Agreements to address those User concerns. The recognition and resolution by NGC of a potential material issue associated with the migration process, from which specific bilateral agreements were developed, provided some measure of assurance and safeguard for the incumbent MCUSA signatories but does not extend far enough.
- This AP seeks the logical extension and recognition of these ‘codification errors’ into the main body of the CUSC to align the MCUSA and CUSC as at the CUSC Implementation Date but does not seek, nor intend, to prevent or preclude future CUSC developments via Amendment Proposals.
- The process and timing of translation process of the MCUSA into CUSC and its subsidiary agreements, schedules, exhibits, supporting methodologies, statements etc meant that there was both overlap and underlap of CUSC document sections

available for review. A consequence of this is that it was not possible to 'test' that the legal rights and obligations of the User under the prevailing MCUSA regime, subject to the revised Governance and Disputes procedures, had not been compromised by the migration process.

- We believe that the issue was raised too late for incorporation into original 'designated' CUSC, which was 'frozen' in late May/early June pending 'designation' which occurred on the 25th June 2001. Despite the subsequent delay to the 18th September before CUSC was implemented, the CUSC was not re-opened during that period to facilitate its rightful inclusion into the Transitional Issues section, although some representations were made to the DTI.
- Now that CUSC is in force, the question arises as to what is the process and mechanism for incorporation and resolution in CUSC of any additional 'transitional issues' which may be identified, and specifically this 'codification error' amendment proposal in the first instance.
- We do not support the view from NGC that the effect of the 'indicative' text of this AP could be to set "aside the relevant objectives for a particular class of amendment," and therefore that the AP should not be approved as this would compromise the Applicable CUSC Objectives as this AP seeks to set them aside. We would reiterate our view that incorporation satisfies the 'efficient discharge' obligation of NGC's CUSC licence condition.
- We note that the Governance Amendment Working Group (GAWG), in which we participated, was unable to reach unanimous agreement with respect to this Amendment Proposal (AP). The GAWG did however fully support the intent of the AP and acknowledged that there may be unintended differences in codification between the MCUSA and CUSC.

If you have any queries in relation to any of the above, please do not hesitate to contact me.

Yours faithfully,

Steve Phillips
Senior Trading Consultant
Market Development
Power & Energy Trading

Reference	CAP008-CR-07
Company	London Electricity Group

From: Cecil Dick [Dick.Cecil@le-group.co.uk]
Sent: 08 April 2002 17:39
To: Groves, Emma
Subject: Consultation Response -CAP009 Codification Errors

Consultation Response -CAP008 Codification Errors

This response from London Electricity Group is on behalf of all the groups CUSC Parties.

We are in favour of CAP008. We consider the CUSC Objectives as a whole would be better met with the addition of CAP008.

Why we support the Amendment.

CUSC was introduced against a very tight time scale. It was not possible within that time-scale to ensure that every element of MCUSA had been correctly codified into the new CUSC documentation. To date codification errors have not been identified, but there could be future issues where one or more will be revealed. At that stage some CUSC Parties will resort to their comfort letters issued by NGC. Other CUSC Parties (the majority) do not have such comfort letters and will be in a difficult interpretation position.

The CUSC should address significant issues that could occur, this is good documentation practice. Possible codification error is an issue in this category.

Further, the issue to a certain minority of CUSC Parties of comfort letter has left an uneven playing field that this amendment will address.

NGC's initial view

In the consultation document, NGC have given an initial view that "the CUSC already contains provision for amendment, set out in Section 8, and therefore any differences identified between the MCUSA and the CUSC can progress through this process". But a CUSC amendment may not be approved by the Authority.

This is not the procedure clearly stated by NGC during the CUSC drafting process. There was no intent by NGC to incorrectly codify the agreement. NGC stated that if a codification was shown to have occurred it would be corrected.

This variation of interpretation of the position could, for a significant issue, lead to legal action by a CUSC Party against either NGC or the Authority.

Conclusion

This amendment resolves all questions of interpretation of the historical position of Codification Errors, removes the possibility of legal action on that issue and sets a level playing field on the question of Codification Errors between those parties who have comfort a letter on the subject and the majority who do not. For these reasons we support the Amendment.

Dick Cecil
London Electricity Group