



National Grid

AMENDMENT REPORT

CUSC Proposed Amendment CAP006

Non-Discrimination

**The purpose of this document is for
submission to the Authority to assist
in their decision on CAP006**

Amendment Ref	CAP006
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Prepared by	National Grid

I DOCUMENT CONTROL**a National Grid Document Control**

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0.2	30/4/02	National Grid	Second Draft for Industry comment
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Name	Organisation
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II CONTENTS TABLE

I DOCUMENT CONTROL	2
a National Grid Document Control	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 ALTERNATIVE AMENDMENT (A)	6
8.0 ALTERNATIVE AMENDMENT (B).....	7
9.0 IMPACT ON CORE INDUSTRY DOCUMENTS.....	7
10.0 IMPLEMENTATION AND TIMESCALES	7
11.0 SUMMARY OF VIEWS AND REPRESENTATIONS	8
12.0 SUMMARY OF PANEL MEMBERS VIEWS.....	9
13.0 NATIONAL GRID RECOMMENDATION	9
14.0 COMMENTS ON DRAFT AMENDMENT REPORT	10
ANNEX 1 - AMENDMENT PROPOSAL FORM.....	11
ANNEX 2 – PROPOSED TEXT TO MODIFY CUSC	14
Part A - Text to give effect to the Proposed Amendment.....	14
Part B - Text to give effect to the Alternative Amendment (A)	16
Part C - Text to give effect to the Alternative Amendment (B)	18
ANNEX 3 – COPIES OF REPRESENTATIONS RECEIVED	20
ANNEX 4 - COPIES OF COMMENTS RECEIVED ON THE DRAFT AMENDMENT REPORT	30

1.0 SUMMARY AND RECOMMENDATION

- 1.1 CAP006 proposes to add provision for an amendment proposal not to be approved if it unduly discriminates or unduly prefers particular CUSC Parties.
- 1.2 Amendment Proposal CAP006 was proposed by British Energy, with support from other Parties (as detailed in the Amendment Proposal form, contained as 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 not able to reach agreement on whether the Proposed Amendment better facilitated the applicable CUSC objectives. In general the principle put forward in CAP006 was supported by the majority of Working Group members, but there were strong opposing views. An Alternative Amendment was formulated by the Working Group, which the majority agreed better facilitated the applicable CUSC objectives.
- 1.4 The Working Group Report for CAP006 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 and the Alternative Amendment.
- 1.5 The Consultation Paper for CAP006 was published by National Grid on the CUSC website and copies sent to Core Industry Document Owners and CUSC Parties. Responses to the CAP006 Consultation were invited by 28th March 2002.
- 1.6 National Grid received a total of 7 responses to the consultation for CAP006, the majority of which supported the Alternative Amendment. One respondent suggested changes to the legal drafting for the Alternative Amendment, which has been presented as Alternative Amendment (B). A summary of responses is contained in Section 10 of this document, with full copies of each response contained in Annex 3.

National Grid Recommendation

- 1.7 National Grid recommends that Alternative Amendment (B) should be approved on the basis that it better facilitates achievement of the Applicable CUSC Objectives and provides further clarity over Alternative Amendment (A). It is recommended that implementation only applies to new amendment proposals received after the implementation date, which is recommended to be 10 days after the Authority's decision.

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 CAP006 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 3 to this document.

3.0 THE PROPOSED AMENDMENT

- 3.1 CAP006 proposes that provision be added to the CUSC for an Amendment Proposal not to be approved if it unduly discriminates or unduly prefers particular CUSC Parties. The Proposer considers that the Proposed Amendment would bring the CUSC 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.

4.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

- 4.1 In relation to the Proposed Amendment, which details changes to Section 8 of the CUSC, the objectives of Paragraph 6 of Licence Condition C7F of the Transmission Licence, is the relevant objective. In summary, Paragraph 6 requires the licensee to establish and operate procedures to modify the CUSC itself in order to better facilitate the Applicable CUSC Objectives and therefore the Proposed Amendment must better facilitate this process so that the broader objectives of facilitating effective competition can be achieved.
- 4.2 In general, the principle of including non-discrimination as an explicit requirement in the CUSC was supported by the majority of members of the Working Group, who also agreed that changes to the CUSC should not unduly discriminate against any particular CUSC Party or classes of CUSC Party. Some Working Group members felt that the Proposed Amendment would reinforce the intent of the Applicable CUSC Objectives by explicitly addressing the issue of non-discrimination in the Amendment Process.
- 4.3 This view was countered by other members of the Working Group who did not believe that an explicit requirement for non-discrimination in the CUSC could better facilitate the Applicable CUSC Objectives. It was noted that issues of discrimination were for the determination of the Authority, and that the Competition Act could be used to determine discrimination and therefore it may not better facilitate the Applicable CUSC Objectives to include the requirement in the CUSC.
- 4.4 The Working Group members noted that the Proposed Amendment sought to include a new obligation on the Authority in its consideration of Amendment Proposals, and it was further noted that it may not be possible or appropriate to implement such an obligation in the CUSC as the Authority have their own statutory duties which they are required to meet.

5.0 IMPACT ON THE CUSC

- 5.1 The Proposed Amendment would require amendment of the following paragraphs of Section 8 of the CUSC, 8.15.2, 8.17.8, 8.20.2 and 8.20.5. There will be no impact on other parts of the CUSC.
- 5.2 The text required to give effect to the Alternative Amendment is included as Part A of Annex 2 of this document.

6.0 IMPACT ON CUSC PARTIES

- 6.1 The Proposed Amendment would impact on CUSC Parties in a number of ways. In the first instance, the Proposed Amendment would require Proposers of Amendment Proposals to include a statement to the effect that in preparing the Amendment Proposal it has been ensured that the Amendment would not unduly discriminate. This could potentially increase the workload for Proposers.
- 6.2 The Proposed Amendment may also increase the burden on National Grid to assess whether an Amendment Proposal or Alternative Amendment would unduly discriminate.

7.0 ALTERNATIVE AMENDMENT (A)

Description of Alternative Amendment (A)

- 7.1 Alternative Amendment (A) was formulated by the Governance Amendments Working Group during their consideration of the Proposed Amendment.
- 7.2 Alternative Amendment (A) is intended to follow the intent of the Proposed Amendment and proposes that the CUSC changes should be concerned with the provision of information for the identification of the impact of an Amendment Proposal on all parties (i.e. 'winners' and 'losers') rather than an absolute value judgement to determine whether there is undue discrimination.

Assessment Against Applicable CUSC Objectives

- 7.3 Alternative Amendment (A) recognises the need to consider the impact and implications that CUSC amendments may have on CUSC Parties or classes of CUSC Party, so that information can be presented to the Authority.
- 7.4 The intent and legal text of Alternative Amendment (A) has been formulated to allow the issues to more easily be identified during the process, without making the requirements too rigid, which could be potentially detrimental to the effectiveness of the Amendment Process.

Impact of Alternative Amendment (A) on CUSC

- 7.5 Alternative Amendment (A) would require the amendment of the following Paragraphs of Section 8 of the CUSC, 8.15.2, 8.17.8 and 8.20.2.
- 7.6 The text required to give effect to Alternative Amendment (A) is included as Part B of Annex 2 of this document.

Impact of Alternative Amendment (A) on CUSC Parties

- 7.7 Alternative Amendment (A) could potentially lead to an increase in workload for National Grid for certain Amendment Proposals where it may be required to identify the likely impact and implications of the Amendment Proposal and any Alternative Amendment.

8.0 ALTERNATIVE AMENDMENT (B)

Description of Alternative Amendment (B)

- 8.1 Alternative Amendment (B) was proposed during the wider industry consultation for the Proposed Amendment and Alternative Amendment (A). The Proposer recommends that amendment of Paragraph 8.20.2(h) of the existing CUSC would better clarify the process than the insertion of a new paragraph 8.20.2(l) as proposed by Alternative Amendment (A).

Assessment Against Applicable CUSC Objectives

- 8.2 The assessment against the Applicable CUSC Objectives for Alternative Amendment (B) is the same as that for Alternative Amendment (A). The revision to the legal drafting of Alternative Amendment (A), which has been put forward as Alternative Amendment (B) would not change the intent of Alternative Amendment (A), but would add further clarity to the text and therefore the Amendment Process.

Impact of Alternative Amendment (B) on CUSC

- 8.3 Alternative Amendment (B) would require amendment to the same parts of the CUSC as Alternative Amendment (A), but would not require the insertion of new Paragraph 8.20.2(l) and would instead require amendment of Paragraph 8.20.2(h).
- 8.4 The text required to give effect to Alternative Amendment (B) is included as Part C of Annex 2 of this document.

Impact of Alternative Amendment (B) on CUSC Parties

- 8.5 As Alternative Amendment (A), Alternative Amendment (B) could potentially lead to an increase in workload for National Grid for certain Amendment Proposals where it may be required to identify the likely impact and implications of the Amendment Proposal and any Alternative Amendment.

9.0 IMPACT ON CORE INDUSTRY DOCUMENTS

- 9.1 The Proposed Amendment and Alternative Amendments will have no impact on Core Industry Documents or other industry documentation.

10.0 IMPLEMENTATION AND TIMESCALES

- 10.1 Both the Proposed Amendment and the Alternative Amendments would impact on all active amendment proposals. Therefore the implementation should only apply to new amendment proposals received after the implementation date. It is

recommended that implementation should take place with effect from 10 days after the Authority's decision.

11.0 SUMMARY OF VIEWS AND REPRESENTATIONS

11.1 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.

Views of Panel Members

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

Core Industry Document Owners

11.3 No responses have been submitted by Core Industry Document Owners to the wider industry consultation carried out for CAP006.

Responses to Consultation

11.4 The following table provides an overview of each representation. Copies of the representations are attached as Annex 3.

Reference	Company	Supportive	Comments
CAP006-CR-01	TXU Europe Energy Trading Ltd	No	Support Alternative Amendment
CAP006-CR-02	British Energy	Of Both	Support approval of either the Proposed Amendment or Alternative Amendment.
CAP006-CR-03	Powergen UK plc	No	Support Alternative Amendment
CAP006-CR-04	EdF Trading Ltd & EdF (Generation)	No	Support Alternative Amendment
CAP006-CR-05	British Gas Trading Ltd	No	Do not support either the Proposed Amendment or Alternative Amendment
CAP006-CR-06	ScottishPower Energy Retail Ltd & Scottish Power Generation Ltd	No	Support Alternative Amendment
CAP006-CR-07	London Electricity Group	No	Support Alternative Amendment

11.5 National Grid received a total of 7 responses to the consultation on CUSC Amendment CAP006. Of the total responses, 5 supported the Alternative Amendment as better meeting the Applicable CUSC Objectives and 1 respondent did not support either the Proposed Amendment or the Alternative Amendment.

11.6 The majority of respondents supported the principle of the Proposed Amendment that consideration should be given to the impact of Amendment Proposals on Parties. However, many respondents agreed that the Proposed Amendment as drafted placed a rigid requirement on the process that is not defined and hence would not benefit the effectiveness or efficiency of the Amendment Process.

- 11.7 Two respondents (SP & PG) felt that the CUSC should contain a similar clause to the BSC which details that the code should not discriminate between classes of parties.
- 11.8 In support of the Alternative Amendment, one respondent (SP) identified that Proposers might feel limited if they were required to consider issues of discrimination before submitting an Amendment Proposal.
- 11.9 Two respondents (SP & BGT) felt that the Alternative Amendment, whilst an improvement on the Proposed Amendment, does not explicitly provide for the principle of non-discrimination to be addressed within the CUSC and question whether the Alternative Amendment adds anything to the requirements when the regulatory regime is considered in its entirety.
- 11.10 In addition, one respondent (BGT) felt that issues of non-discrimination are already included in the obligations of the Authority, however this was countered by another respondent (BE) who felt that the principle should be included in the CUSC level to ensure that parties raising Amendment Proposals have to give due consideration to the impact of the proposal on other CUSC Parties.
- 11.11 One respondent (SP) raised concern regarding the legal text for the Alternative Amendment, National Grid recognise that there is some similarity in the wording of paragraphs 8.20.2(l) and 8.20.2(h) and it may be possible to further rationalise the text to reflect this.

12.0 SUMMARY OF PANEL MEMBERS VIEWS

- 12.1 On the basis of the consultation and assessment undertaken in respect of CUSC Amendment Proposal CAP006, it was the opinion of those CUSC Amendments Panel Members expressing a view, that Alternative Amendment B (as outlined in the Amendment Report) should be implemented to the time-scales as recommended.

13.0 NATIONAL GRID RECOMMENDATION

- 13.1 National Grid recommends that the Proposed Amendment should not be implemented. This is on the basis that it would not better facilitate the Applicable CUSC Objectives to include a provision for non-discrimination which may be ambiguous in its requirements. In addition, any issues of non-discrimination should be an issue for the Authority to determine.
- 13.2 It is the recommendation of National Grid that Alternative Amendment (B) recognises that the identification of the impact on all parties would better facilitate the Applicable CUSC Objectives than the obligation to determine if there would be undue discrimination to Parties caused by an amendment proposal to the CUSC.
- 13.3 National Grid believe that consideration should be given to the impact of Amendment Proposals and where appropriate, the identification of any 'winners' or 'losers'.

14.0 COMMENTS ON DRAFT AMENDMENT REPORT

14.1 National Grid received 2 responses following the publication of the draft Amendment Report. The following table provides an overview of each representation. Copies of the representations are attached as Annex 4.

Reference	Company	Summary of Comments
CAP005-AR-01	ScottishPower Energy Retail Limited & Scottish Power Generation Limited	Reiterate points made during consultation concerning suggested changes to legal drafting for the Alternative Amendment.
CAP005-AR-02	British Energy	Correct summary of response contained in Section 10.4 of the draft Amendment Report.

14.2 Following response from British Energy, the Amendment Report has been amended accordingly.

14.3 Scottish Power reiterated their response to the industry consultation to change the legal drafting of the Alternative Amendment, a second Alternative Amendment has been put forward in this Amendment Report to reflect this change.

14.4 A second draft of the Amendment Report to include details of Alternative Amendment (B) was circulated on 30th April 2002, inviting comments by 8th May 2002. Scottish Power submitted a response supporting Alternative Amendment (B). A copy of this response is also included in Annex 4 Reference CAP006-AR-03.

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 Ltd

Proposers Representative:

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

Steve Phillips (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)

Absence of non-discrimination/preference test in amendment process.

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

(This should be in reasonable but not excessive detail)

To add provision for an Amendment Proposal not to be approved if it unduly discriminates or unduly prefers particular CUSC Parties.

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 clauses of section 8 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 decided 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 enable proper evaluation of the proposed Amendment and better facilitate achievement of the Applicable CUSC Objectives since it would facilitate effective competition in generation and supply of electricity and facilitate the efficient discharge of NGC's obligations. The Amendment would also bring the CUSC in line with the 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. The Amendment will improve existing practice and will increase confidence in the CUSC, which is a central part of the framework for the operation of the electricity market and help safeguard against undue discrimination or undue preference. The Amendment will therefore better facilitate competition in the electricity market.

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

Annex 2 – Proposed Text to modify CUSC

Part A - Text to give effect to the Proposed Amendment

Conformed Version

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 A - Text to give effect to the Proposed Amendment

Clean Version

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 (A)

Conformed Version

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 {Leave as existing CUSC text.}

Part B - Text to give effect to the Alternative Amendment (A)

Clean Version

1. Amendment Proposal

8.15.4 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:

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

8.15.5 if a proposal fails in any material respect to provide the information in Paragraph 8.15.2 (excluding Paragraphs (e), (g), (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.}

Part C - Text to give effect to the Alternative Amendment (B)**Conformed Version**1. Amendment Proposal

8.15.6 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:

~~(n) where applicable, comments on the likely impacts on and the implications for CUSC parties in general (or classes of CUSC parties in general).~~

~~(o) where appropriate, any other comments the proposer wishes to make in support of the proposal.~~

8.15.7 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**):

(h) to the extent such information is available to **NGC**, or where applicable, an assessment of the likely impacts of the **Proposed Amendment** and any **Alternative Amendment** on **CUSC Parties** in general (or classes of **CUSC Parties** in general), including the changes which are likely to be required to their internal systems and processes and an estimate of the development, capital and operating costs associated with implementing the changes to the **CUSC** and **to Core Industry Documents**.

~~(i) 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 {Leave as existing CUSC text.}

Part C - Text to give effect to the Alternative Amendment (B)

Clean Version

1. Amendment Proposal

8.15.8 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:

(p) where applicable, comments on the likely impacts on and the implications for CUSC parties in general (or classes of CUSC parties in general).

(q) where appropriate, any other comments the proposer wishes to make in support of the proposal.

8.15.9 if a proposal fails in any material respect to provide the information in Paragraph 8.15.2 (excluding Paragraphs (e), (g), (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**):

(h) to the extent such information is available to **NGC**, or where applicable, an assessment of the likely impacts of the **Proposed Amendment** and any **Alternative Amendment on CUSC Parties** in general (or classes of **CUSC Parties** in general), including the changes which are likely to be required to their internal systems and processes and an estimate of the development, capital and operating costs associated with implementing the changes to the **CUSC** and **to Core Industry Documents**.

4. Amendment Report

8.20.5 {No change to existing CUSC text.}

Annex 3 – Copies of Representations Received

This Annex includes copies of any representations received following circulation of the Consultation Document (circulated on 28th February 2002, requesting comments by close of business on 28th March 2002).

Representations were received from the following parties:

No.	Company	File Number
1	TXU Energy Trading Ltd	CAP006-CR-01
2	British Energy	CAP006-CR-02
3	Powergen UK plc	CAP006-CR-03
4	EdF Trading Ltd & EdF (Generation)	CAP006-CR-04
5	British Gas Trading Limited	CAP006-CR-05
6	ScottishPower Energy Retail Limited & Scottish Power Generation Limited	CAP006-CR-06
7	London Electricity Group	CAP006-CR-07

Reference	CAP006-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

6th March 2002

CAP006 Consultation Response

Dear Emma

We confirm that we support the Alternative Amendment proposal as drafted by the Working Group.

Yours sincerely

Philip Russell
Market Development Manager
For and on behalf of the 20 TXU CUSC Parties

Reference	CAP006-CR-02
Company	British Energy



21st March 2002

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

Dear

CUSC Consultation Document CAP006: Non-Discrimination

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 either the Amendment Proposal or the Alternative Amendment as defined in the consultation document.

British Energy (BE), with support from a number of other CUSC Parties, developed and submitted this Amendment Proposal (AP) for consideration by the CUSC Amendment Panel (CAP) and subsequently participated in the Governance Amendment Working Group (GAWG) discussions to debate this CUSC Panel's Role & Report Process amendment proposal.

As the Proposer of the AP, this wider industry consultation some four months after the AP was submitted also provides an opportunity to reflect on the original AP submitted with the benefit of the experience of the GAWG discussions. We note that the majority of the GAWG supports the Alternative Amendment, and welcome National Grid's view that the Alternative Amendment 'better facilitates achievement of the Applicable CUSC Objectives'.

With hindsight, it would perhaps have been better to have, more correctly, called the AP 'Undue Discrimination' rather than using the more generic term 'non-discrimination' which seemed to have more emotive connotations for some of the GAWG members. Some of the arguments against the original AP within GAWG stemmed from views, for example, that inclusion of such a principle was unnecessary in that it is an issue which is addressed elsewhere, either within the Authority's or the Competition Commission's terms of reference. Another view was that its inclusion effectively amounts to adding another objective. Whatever the merits of any or all such views, we believe that explicit inclusion of the principle at the lowest level (i.e. CUSC) is the correct place to address the issue and will ensure that parties raising amendment proposals have to provide or give due consideration to the impact of their proposal on other CUSC parties.

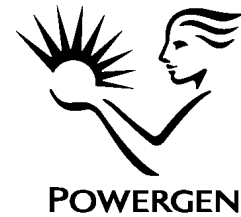
There is considerable merit in the Alternative AP drafted by the GAWG which retains the spirit of a substantial part of original AP. We note too National Grid's support in section 7.2 of the consultation document for the Alternative AP and therefore we are also happy to endorse our support for the Alternative AP as a pragmatic compromise to the original AP.

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	CAP006-CR-03
Company	Powergen UK plc

26th March 2002

Dear David,

Powergen Comments on Amendment Proposal Non Discrimination - CAP006

Powergen UK plc ('Powergen') welcomes the opportunity to comment on the above consultation document published on 28th February 2002. Powergen provides this response on behalf of itself and the following Parties: Powergen Energy plc, Diamond Power Generation Limited and Cottam Development Centre Limited.

This proposal recommends the addition of the provision for an Amendment proposal not to be approved if it unduly discriminates or gives undue preference to particular CUSC parties. This provision would be in the form of an additional clause in CUSC Section 8, and Working or Standing Groups would need to evaluate proposals with this provision in mind, where it is applicable.

Powergen support the alternative proposal as we agree that the aim of the CUSC is to codify all generic matters common to all CUSC parties of the NGC transmission system. As such the proposal seeks to find a common ground on issues relating to the use and connection to the transmission system. We believe that any issue not affecting the CUSC parties should come under a Bilateral Agreement between the affected party and the NGC. There should be a clause in the CUSC similar to that in the BSC which details that the code should not discriminate between classes of parties.

If you have any questions please let me know.

Yours Sincerely,

Jane Butterfield

Strategy & Regulation Department
Energy Trading
Powergen
024 7642 4414

Reference	CAP006-CR-04
Company	EdF Trading Ltd & EdF (Generation)

From: Steve Drummond [Steve.Drummond@btopenworld.com]
Sent: 26 March 2002 17:45
To: Groves, Emma
Cc: saeed.patel@edftrading.com; Philippe Gaillet;
Nick.taylor@edftrading.com
Subject: CAP006 Undue Discrimination – Consultation Document

On behalf of EdF Trading Ltd and EdF (Generation) please find herewith my comments on the CUSC Amendment Proposal 006 on whether there should be explicit clauses in CUSC relating to undue discrimination.

I don't believe there is any doubt that there should be any 'undue discrimination'. The whole basis of the market is that there should be none. There are cases where there is 'due discrimination' and I believe that to be reasonable where special circumstances have been identified, but that issue is outwith the arguments in this case.

To make such a requirement as proposed and explicit in CUSC would in my view require NGC and the CUSC Panel to judge whether there had been undue discrimination. It would need close definition and I'm not convinced that the Panel and NGC would be the appropriate bodies to make such a determination; this has been the task of Ofgem to date and it seems appropriate that it should remain there as it is a regulatory matter. I agree with the working group that the results of the amendment procedure should be to identify the 'pros and cons' and the 'winners and losers' and it is on that basis that Ofgem can make its ultimate decision.

Therefore I believe that the proposed Alternative Amendment is more appropriate and better meets the CUSC objectives.

Regards

Steve Drummond
Adviser to EdF Energy Merchants Ltd

Reference	CAP006-CR-05
Company	British Gas Trading Limited

word/cusc



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

For the Attention of Ms E Groves
- Commercial Development

energy management group

Charter Court
50 Windsor Road
Slough
Berkshire
SL1 2HA

Tel. (01753) 758051
Fax (01753) 758170
Our Ref. Cap006
Your Ref.
28th March 2002

Dear Emma,

**Re: CUSC Amendment CAP006 – Non-Discrimination
Consultation Document**

Thank you for the opportunity to comment on the Consultation Document in respect of the above Amendment Proposal. British Gas Trading Limited (BGT) has been involved in the Workgroup discussions surrounding the proposal.

BGT do not support the original Amendment Proposal and have reservations as to whether the Alternative actually improves the CUSC. We do not believe that non-discrimination is a practical element to be included in CUSC as it is highly likely that Amendment Proposals will have differing impacts on different CUSC parties and in some cases may disadvantage or discriminate against all players, yet pass the test of improving the CUSC against the relevant objectives. A more relevant test should be whether the changes unduly discriminate and we believe that this is already included in the obligations of the Authority.

Turning to the Alternative, we believe that whilst this is better than the original Amendment proposal, we are not convinced that this adds anything to the requirements that are already in place when one considers the regulatory regime in its entirety

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

Yours sincerely,

Simon Goldring
Transportation Manager

Reference	CAP006-CR-06
Company	ScottishPower Energy Retail Limited & Scottish Power Generation Limited

CUSC Amendment Consultation

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

28th March 2002

CAP006: Non-Discrimination

Dear Emma,

Many thanks for the opportunity to consider the consultation document in respect of CUSC Amendment proposal CAP006. This response is provided on behalf of ScottishPower Energy Retail Limited and Scottish Power Generation Limited.

In general, we are supportive of the principle of non-discrimination. An amendment, which discriminates against any one CUSC Party or a group of CUSC Parties, would not meet the applicable CUSC Objective in respect of facilitating effective competition in the generation and supply of electricity. It is self-evident that disadvantage to a particular Party or groups of Parties would impact adversely on their ability to compete with other Parties who may benefit from the same amendment.

The issue in CAP006 is how to reflect the principle of non-discrimination. The Original Amendment takes the approach of imposing an obligation on the proposer of an amendment to “ensure” that it meets the principle of non-discrimination. That obligation is rolled out further to Working Groups considering the amendment and in respect of the issues covered in the Amendment Report and the criteria upon which the Authority makes its decision about an amendment.

We do not agree that imposing such an obligation would be beneficial for the CUSC amendment process. Proposers, for instance, might require to undertake an extensive enquiry into the impact of their proposed amendments before they were happy to put forward a change. By placing the onus of proving the non-discriminatory impact of an amendment upon proposers at the outset, Parties might feel limited in their ability to effect change to the CUSC. It would also make it easier for an amendment to be rejected if the proposer could not provide a statement about its non-discriminatory impact.

The Alternative Amendment is more pragmatic in only expecting proposers, Working Groups and the Amendment Report to provide further information about the potential impact of amendments on one or more Parties or groups of Parties. It is not prescriptive in the manner of the Original Amendment. However, it does not explicitly provide for the principle of non-discrimination within the CUSC either. Further information about the potential impacts on Parties may provide more evidence upon which Parties can make individual judgements about whether they support a proposal or not, but there is

no clear obligation on anyone under the CUSC to ensure that it is given effect on a non-discriminatory basis.

On balance, we would support the Alternative Amendment as better meeting the applicable CUSC Objectives in terms of providing further information which may help Parties to determine the merit or otherwise of a proposal. However, we would request the following revision to the proposed legal drafting:

8.20.2(l) – seems to replicate similar wording in 8.20.2(h). We would suggest the following revised wording for 8.20.2(h) instead (additions in red), viz. “to the extent such information is available to NGC, **or where applicable**, an assessment of the **likely** impacts of the Proposed Amendment...”

It is perhaps worthy of note that, under the BSC, it is a BSC Panel objective to ensure that that Code is given effect without undue discrimination between Parties or classes of Party (Section B 1.2.1(c)). There is no such similar explicit objective for the Amendments Panel to uphold in the context of the CUSC.

If you wish to discuss the content of this response, please do not hesitate to contact me.

Yours sincerely,

Abid Sheikh
Commercial Analyst (0141 568 3113)

Reference	CAP006-CR-07
Company	London Electricity Group

From: Cecil Dick [Dick.Cecil@le-group.co.uk]
Sent: 28 March 2002 17:12
To: Groves, Emma
Subject: CAP006 Consolation Response - Non Discrimination

Consultation Response -CAP006 Non Discrimination

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

We consider that CAP006 is too tightly drafted, particularly in respect of proposed clauses 8.15.2 (j), 8.17.8 (e) and 8.20.2 (l). We therefore do not agree with this Amendment.

In the Alternative Amendment form we consider the CUSC Objectives are better met and we support CAP006 Alternative.

Reasoning.

The Amendment drafting of clauses 8.15.2 (j), 8.17.8 (e) and 8.20.2 (l) places an onerous requirement on amendment proposers by requiring them not to unduly discriminate for or against any party.

The Alternative Amendment modifies the above onerous requirement to “likely impact on and the implications for any CUSC parties in general”. We consider this wording will better facilitate the CUSC Objectives.

Dick Cecil
London Electricity Group

Annex 4 - Copies of Comments received on the Draft Amendment Report

This Annex includes copies of any representations received following circulation of the Draft Amendment Report (circulated on 3rd April 2002, requesting comments by close of business on 10th April 2002).

Representations were received from the following parties:

No.	Company	File Number
1	ScottishPower Energy Retail Limited & Scottish Power Generation Limited	CAP006-AR-01
2	British Energy	CAP006-AR-02

The following representations were received in response to the circulation of a second draft of the Amendment Report.

No.	Company	File Number
4	ScottishPower Energy Retail Limited & Scottish Power Generation Limited	CAP005-AR-04

Reference	CAP006-AR-01
Company	ScottishPower Energy Retail Limited & Scottish Power Generation Limited

CUSC Amendment Report Consultation

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

10th April 2002

CAP006: Non-Discrimination

Dear Emma,

Many thanks for this further opportunity to consider CUSC Amendment proposal CAP006. This response is provided on behalf of ScottishPower Energy Retail Limited and Scottish Power Generation Limited.

We would again wish to reiterate the views expressed in our previous response in favour of the Alternative Amendment.

We also note the comments made by NGC in respect of our suggested change to the legal drafting of 8.20.2 (see below). We are disappointed that NGC considers it preferable to deal with this minor drafting point by way of a future amendment proposal. This appears to be an inefficient way of dealing with our suggestion. It seems more sensible to us if, rather than replicate a significant part of an existing sub-paragraph as a new sub-paragraph, the existing sub-paragraph is slightly amended to convey the same intent.

8.20.2(1) – seems to replicate similar wording in 8.20.2(h). We would suggest the following revised wording for 8.20.2(h) instead (additions in red), viz. “to the extent such information is available to NGC, **or where applicable**, an assessment of the **likely** impacts of the Proposed Amendment...”

I hope that you find these further comments helpful. If you wish to discuss the content of this response, please do not hesitate to contact me.

Yours sincerely,

Abid Sheikh
Commercial Analyst (0141 568 3113)

Reference	CAP006-AR-02
Company	British Energy

From: Phillips Steve
Sent: 10 April 2002 12:12
To: 'CUSC Team'
Subject: RE: CUSC - CAP005 & CAP006 Draft Amendment Reports
Importance: High

Excluding typo errors, which I assume will be sorted by basic spell-checking etc, I have the following minor comments for incorporation:

CAP005:

1. Our response indicates that the FULL, original title, as provided in the original Amendment Proposal attachment title page as "Panel's Role & Report Process" should be reinstated to ensure that the AP is not misrepresented, particularly as the Alternative Amendment deals virtually exclusively with this aspect of the AP.
2. The table in section 10.4 incorrectly identifies BE as NOT supporting the original AP. Please correct as per our letter (we support BOTH!)

CAP006:

1. The table in section 10.4 here too incorrectly identifies BE as NOT supporting the original AP. Please correct as per our letter (we support BOTH!)

Regards

Steve

Reference	CAP006-AR-03
Company	ScottishPower Energy Retail Limited & Scottish Power Generation Limited

CUSC Amendment Report Consultation

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

8th May 2002

CAP006: Non-Discrimination

Dear Emma,

Many thanks for this further opportunity to consider CUSC Amendment proposal CAP006. This response is provided on behalf of ScottishPower Energy Retail Limited and Scottish Power Generation Limited.

We would wish to express our support for Alternative Amendment (B) which includes the amended legal drafting which we suggested in our previous responses.

If you wish to discuss the content of this response, please do not hesitate to contact me.

Yours sincerely,

Abid Sheikh
Commercial Analyst (0141 568 3113)