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04 August 2005

The National Grid Company, CUSC Signatories and
Other Interested Parties

Our Ref: IND/COD/CUSC/CAP085

Dear Colleague,

Amendment to the Connection and Use of System Code ("CUSC") - Decision and Notice in relation to Proposed Amendment CAP085: "Revised Treatment of Housekeeping Amendments".

The Gas and Electricity Markets Authority (the "Authority"¹) has considered the issues raised in the Amendment Report² in respect of Proposed Amendment CAP085 "Revised Treatment of Housekeeping Amendments".

The National Grid Company plc ("NGC") recommended to the Authority that Consultation Alternative Amendment CAP085 be approved with an implementation date of 10 Business days after the Authority's decision³.

Having considered the Amendment Report and NGC's recommendation and having regard to the Applicable CUSC Objectives³ and Ofgem's wider statutory duties,⁴ the Authority has decided to direct a modification to the CUSC in line with Consultation Alternative Amendment CAP085.

A separate letter contains the direction to NGC to modify the CUSC in accordance with Consultation Alternative Amendment CAP085 as set out in the Amendment Report.

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

² CAP085 Amendment Report dated 23 June 2005.

³ The Applicable CUSC Objectives are contained in Standard Condition C10 of the licence to transmit electricity treated as granted to NGC under Section 6 of the Electricity Act 1989 (the "Transmission Licence") and are: the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and 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.

⁴ Ofgem's statutory duties are wider than the matters that the Panel must take into consideration and include amongst other things a duty to have regard to social and environmental guidance provided to Ofgem by the government.

This letter explains the background to Amendment Proposal CAP085, and sets out the Authority's reasons for its decision. This letter constitutes notice by the Authority under section 49A of the Electricity Act 1989 in relation to the direction.

Background

Certain Amendment Proposals which come forward under the CUSC are submitted to correct minor, self evident, errors within the code. These errors typically include incorrect cross referencing, incorrect paragraph numbering, typographical errors etc. Over time, working practice has defined these Amendments as 'housekeeping amendments', although this has not been a term defined in section 11 of the CUSC. Like every other Amendment Proposal, these 'housekeeping' changes pass through the procedures for the modification of the CUSC⁵ which have been designed to ensure Amendments are evaluated in an inclusive and transparent fashion. The practical effect of these provisions is that it may take over two months for an Amendment Proposal seeking to correct a minor, self evident, error to be developed from the initial proposal to modify the CUSC submitted to the Amendments Panel, into a final Amendment Report capable of being considered by the Authority. It was suggested that due to the nature of these changes they may not need to pass through the same level of analysis as other changes. For this reason, Proposed Amendment CAP085 was raised by NGC on 13 April 2005 and was submitted for consideration at the CUSC Amendments Panel Meeting on 21 April 2005.

At the meeting the Panel determined that Proposed Amendment CAP085 should proceed to wider consultation by NGC. A consultation paper was issued on 27 April 2005 with responses invited by 25 May 2005. A Consultation Alternative Amendment was received by NGC and a Consultation Alternative Consultation document was issued on 2 June 2005. Views on the Consultation Alternative Consultation were invited by 15 June 2005. The final Amendment Report was submitted to the Authority on 23 June 2005.

The Proposed Amendment

CAP085 seeks to introduce a definition of what would constitute a Housekeeping Amendment in the CUSC and to include a modified amendment process against which appropriate changes would be progressed.

The Proposed Amendment would allow for any CUSC party to request at, or prior to, the Amendments Panel at which the Amendment Proposal is first discussed, that the Amendment Proposal be treated as a Housekeeping Amendment. The Panel would then be obliged to consider such a request at that meeting and reach agreement as to whether or not they considered the Amendment Proposal to be a Housekeeping Amendment.

Under the proposals contained in CAP085, where the Panel reaches an agreement that the Amendment Proposal should be treated as a Housekeeping Amendment, then NGC would, as soon as reasonably practicable after the Amendments Panel meeting, publish the Housekeeping Amendment on the NGC website for a minimum of five business days and notify CUSC parties

⁵ (as detailed in section 8 of that document)

and such other persons who may be considered to have an appropriate interest, of such publication. Following publication, NGC would submit a Housekeeping Amendment Report to the Authority, again notifying CUSC parties, Panel members, and other persons who had asked to be notified, that such a submission had been made.

When the final Amendment Report had been sent to Ofgem, the Authority would then approve or reject the Amendment Proposal and direct NGC accordingly. CAP085 also provides that where the Authority did not agree with the Amendments Panel that the Amendment Proposal should be treated as a Housekeeping Amendment, Ofgem could notify NGC accordingly and NGC would resubmit the proposal to the next Amendment Panel to be treated as a new Amendment Proposal.

The Proposer suggested that CAP085 would provide a more efficient, lighter touch approach to the progression of Housekeeping Amendments and therefore facilitate Applicable CUSC Objective (a) by better enabling the Licensee to efficiently discharge its obligations under the Licence and the Act.

Alternative Amendment

A Consultation Alternative Amendment was submitted jointly by the Proposer and Scottish and Southern Energy suggesting some changes to the Proposed Amendment.

The Consultation Alternative was the same as the Proposed Amendment except in the following respects.

- it required NGC to publish an Amendment agreed by the Panel to be Housekeeping Amendment, for a minimum period of ten business days,
- it required the Housekeeping Amendment Report submitted to the Authority to include copies and a summary of written representations or objections made by respondents, and
- it provided that in accordance with the Transmission Licence, the Authority may only approve or not approve an Amendment Proposal presented to it within a Housekeeping Amendment Report.

It was considered that these changes represented an improvement on the original Amendment Proposal by allowing a more appropriate amount of time for consideration of a Proposed Amendment, enabling CUSC Parties to make their views known to the Authority more effectively, and ensuring the Authority was not placed in a position where it was invited to make a decision other than to approve or reject an Amendment Proposal.

For these reasons, it was considered that the Consultation Alternative Amendment better facilitated Applicable CUSC Objective (a) than the Proposed Amendment.

Respondents' views

NGC received six responses to the consultation in respect of Proposed Amendment CAP085, and four responses to the further consultation on the Consultation Alternative Amendment. Five of the six responses to the initial consultation expressed support for the Proposed Amendment. Three of the four respondents to the consultation of the Consultation Alternative Amendment expressed support for the Consultation Alternative Amendment.

The one respondent that did not support the Proposed Amendment or Consultation Alternative Amendment considered that creating a new procedure for the consideration of Housekeeping Modifications was not the most efficient way to consider such modifications. They considered the existing CUSC amendment process allows for Housekeeping Amendments to be considered in a more streamlined fashion and all that is required is an alteration to NGC's internal guidelines when considering Housekeeping Modifications to reduce the time allowed for consultation and the form of the consultation document.

The remaining respondents supported the principle of adopting a more streamlined procedure for the consideration of Housekeeping Amendments. However, some did raise concerns with the details of the procedure outlined.

One considered that the legal text should provide that the Panel decision on whether a Proposed Amendment was Housekeeping or not should be passed by unanimous agreement only, suggesting that if the Panel could not reach agreement unanimously then the Proposal should not be passed as a Housekeeping Amendment. However following discussions with NGC this respondent was of the view that the current wording of the legal text implied the Panel reaching a decision by consensus and therefore if there was any contention at the Panel, the Panel would not reach an agreement to define an Amendment as Housekeeping.

As clarification to another respondent to the consultation of the Proposed Amendment, NGC provided that if a single CUSC Party did not consider a Housekeeping Amendment to be as such, it would not mean the Amendment would then consequently be considered as a non Housekeeping Amendment and therefore pass down the established process for consideration of modifications. However NGC stated that if they received such a response and did not agree with it then at the very least they would include the response in the Housekeeping Amendment Report to the Authority. If they agreed with the response they would withdraw the Amendment Proposal.

Another respondent considered that the legal drafting should be altered to allow a single Amendment Proposal to contain multiple Amendments but for the Authority to approve or reject each element so as to avoid all changes being rejected for the sake of one rejection.

The respondents' views are summarised and contained in the Amendment Report in respect of Proposed Amendment CAP085.

Amendments Panel Members' views

The Amendments Panel indicated at its meeting on 22 April 2005 that it considered CAP085 could potentially work better if the Authority did not have the opportunity to direct NGC to take

the proposal back through the normal amendment process. This suggestion was incorporated into the Consultation Alternative Amendment.

One Panel member responded to the further consultation of the Consultation Alternative Amendment expressing his support for it.

NGC's recommendation

NGC recommended to the Authority that Consultation Alternative Amendment CAP085 should be approved with an implementation date of 10 business days after an Authority decision.

Ofgem's view

Having considered the Amendment Report, Ofgem considers, having regard to the Applicable CUSC Objectives and its statutory duties, that Consultation Alternative Amendment CAP085 would better facilitate the achievement of the Applicable CUSC Objectives.

Ofgem considers that it is appropriate to deal with the type of amendments which have come to be defined by established working practice as 'housekeeping' changes in a more efficient manner than is currently provided for by current interpretation of the provisions of the CUSC. In this regard Ofgem notes the possibility, raised by way of a consultation response, that the intention of CAP085 could have been achieved by amending the current practice of NGC as regards the time allowed for consultation on amendment proposals of this type. The existing version of the CUSC allows NGC to establish a period of consultation shorter than the period of one month currently applied to Amendments identified as including changes of a 'housekeeping' nature.⁶ Ofgem shares the view of the consultation respondent that it would have been possible to achieve much of the intent of CAP085 within the context of the current baseline had NGC chosen to exercise those provisions accordingly. Notwithstanding this, Ofgem considers that the codification of a shorter consultation period suggested by NGC in CAP085 will enable the licensee to more efficiently discharge the obligation placed upon it by Applicable CUSC Objective (a).

The Proposed Amendment would have enabled the Authority to notify NGC that a proposal contained in a final Amendment Report should not be treated as a Housekeeping Amendment, and that such a notification would require NGC to resubmit the proposal under the established amendment process. Ofgem does not consider this option is available to the Authority under the current terms of the Transmission Licence and as such the Authority could not approve the original proposal. Ofgem also notes the view expressed in the consultation that an alternative mechanism could have been for multiple proposals for change to come forward under one Amendment Report, and for Ofgem to be capable of accepting or rejecting elements of it as appropriate. Again, Ofgem does not consider it would be possible for NGC to submit such an Amendment Report under the current terms of the Transmission Licence.

In the past, with regard to housekeeping changes, it has been the practice of NGC to submit a batch of separate proposed changes to the CUSC but to produce one Amendment Report for this

⁶ Section 8.16.4 of the CUSC provides that the period of consultation may not be longer than 2 months unless this can be justified and the Authority does not object to an extension.

batch of Amendment Proposals. Ofgem notes that the Transmission Licence anticipates that one Amendment Report should be produced for each Amendment Proposal progressed, and that no provision of the CUSC prevents a number of changes to the CUSC of a housekeeping type from being progressed within the scope of a single Amendment Proposal.

Ofgem retains some concerns over the definition of “Housekeeping Amendment” provided in Consultation Alternative CAP085. Ofgem considers that the correction of erroneously deleted or inserted text may still have a material effect on parties to the CUSC, and that in such circumstances it may be more in keeping with both the pre-existing working practice definition of a housekeeping change, and may better facilitate achievement of Applicable CUSC Objective (a), for such changes to be subject to the full scrutiny of the amendment process.

Any new process introduced for the consideration of Housekeeping Amendments needs to ensure that only appropriate proposals go through the streamlined process. Ofgem considers that Consultation Alternative CAP085 offers safeguards which mitigate the risk of changes being progressed as Housekeeping Amendments when in fact they have material impacts. The provisions in the Consultation Alternative require the Amendment Proposal to be placed on NGC’s website and subject to scrutiny for a longer period than provided for in the Proposed Amendment and for responses received to be appended to the report received by the Authority.

As described in this letter, certain aspects of the Proposed Amendment carry potential risk. Whilst this is the case, Ofgem considers Consultation Alternative Amendment CAP085 strikes an appropriate balance between the need to reduce the period which industry takes to progress a housekeeping change,⁷ with the need to ensure that an appropriate level of analysis and consultation is provided in the context of each change to the CUSC. As such it is Ofgem’s view that CAP085 better facilitates achievement of the Applicable CUSC Objectives. Ofgem further considers that the practical realities of the operation of the CUSC Amendments Panel will help to ensure that only appropriate changes are progressed as Housekeeping Amendments.

The Authority’s Decision

The Authority has therefore decided to direct that Consultation Alternative Amendment CAP085, as set out in the Amendment Report, should be made and implemented. An attached letter contains this direction.

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,



Nick Simpson
Director, Modifications

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

⁷ (from over two months to around three weeks)