

Amendment proposal:	Connection and Use of System Code (CUSC) CAP160: Improvements to the assessment of Amendments (CAP160)		
Decision:	The Authority ¹ directs that this proposal be made ²		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the CUSC and other interested parties		
Date of publication:	14 August 2008	Implementation Date:	15 August 2008

Background to the amendment proposal

Under the current CUSC governance process an Amendment, once raised can be sent for assessment and evaluation by an expert Working Group (WG). The WG, if necessary, can develop and assess one or more WG Alternative Amendments (WGAA). At the end of the WG process, the WG must present its assessment to the CUSC Panel. If the Panel is satisfied with the WG report, the WG process comes to a close and the Proposal and any WGAA proceed to industry consultation.

During the consultation phase, any CUSC Party may raise a Consultation Alternative Amendment (CAA) if they consider an alternative solution would better facilitate achievement of the applicable CUSC Objectives compared with the original Amendment Proposal and if applicable, any WGAA's.

There are no limits as to the number of CAA's that can be raised and they can not be submitted to an expert WG for assessment and evaluation. The CAA's do undergo a process of further consultation, following which an Amendment Report (AR) is drafted. The AR details, amongst other things, all the amendments that may have been raised during the process with analysis, to the extent that any has been carried out, of how each alternative purports to better facilitate the applicable CUSC Objectives when compared against the current baseline and all other alternatives. The Amendments Panel, based on the contents of this report then undertake a Recommendation Vote, to determine which alternatives, if any, better facilitate achievement of the applicable CUSC Objectives and if there is more than one option, which one best facilitates amongst them. The AR is then formally submitted to the Authority for decision.

There have been situations with previous Amendment Proposals³ where a large number of CAA's have been raised which have had analysis limited to that provided in isolation by their proposers. This had lead to difficulties for the industry and in particular the Panel and the Authority to determine which alternative, if any, best facilitates achievement of the applicable CUSC Objectives and should be implemented.

The amendment proposal

CAP160 seeks to address the issues of;

- lack of analysis that has been afforded to proposals that have been raised in response to consultation; and

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

²This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

³ CAP 89/90/91 and CAP131

- large numbers of Consultation Alternative Amendments raised.

Lack of analysis

CAA's do not get an opportunity to be analysed by a WG because they can only be raised during the Consultation Phase which takes place after the WG phase has closed. The Panel does not have the power to reconvene the WG Phase and hence any analysis is limited to that provided by the proposer and any provided in response to the CAA consultation.

CAP160 proposes to provide a consultation phase within the WG stage. The expectation is that the WG consultation would take place once the WG had developed the detail of the important aspects of any proposals. CUSC Parties would have an opportunity during this consultation to submit a WG Consultation Request. This in essence would be a suggested alternative amendment submitted by a respondent for the WG to consider and evaluate. The WG may, on the basis of responses and WG Consultation Requests received, decide to alter existing WGAA's, create new WGAA(s) or following evaluation not take WG Consultation Request(s) forward at all. The WG would decide on a majority voting basis, however as a safeguard, the WG chair would have an over-riding discretion and could submit a WG Consultation Request as a formal WGAA even in the absence of a majority. CAP160 also provides opportunity for further consultation within the WG process, if deemed necessary, subject to approval from the Panel and no objection by the Authority.

As with the existing process, the WG would be required to submit a report of its assessment to the Panel; however, the WG process would not necessarily close at this point. Providing the report was satisfactory, the Amendment would progress to a Company consultation and if any new issues were raised by this consultation, the Panel would have the option to resubmit the Amendment back to the WG.

Overall CAP160 enhances the role of the WG by requiring it to consider and evaluate all alternatives that are raised by CUSC parties in response to the WG consultation.

Large Numbers of Consultation Alternatives

As described above, CAP160 provides for WGs to conduct a consultation exercise, in response to which Parties can submit a WG Consultation Request.

Parties will no longer be able to submit CAA's which assured them that an alternative amendment they raised would carry forward within the process.

The proposer considers that abolishing the ability to submit CAA's and introducing the WG Consultation Request concept will allow the WG and its chair to efficiently manage the number of Alternatives that come through the process. WG's can amalgamate similar requests and alter existing WGAA's in light of responses and requests received in a manner which should not take anything away from the suggested alternative Request. Finally the WG could decide not to progress a Request on the basis of the evaluation and analysis, as described above, that WG's would now be required to carry out. In the proposers view enhancing the WG's role in this manner would better facilitate achievement of applicable CUSC Objective (a).

CUSC Panel⁴ recommendation

At the Amendments Panel meeting on 18 July 2008, the CUSC Panel unanimously recommended that CAP160 should be implemented.

The Authority's decision

The Authority has considered the issues raised by the amendment proposal and the final AR dated 25 July 2008. The Authority has considered and taken into account the responses to NGET's consultation on the amendment proposal which are attached to the AR⁵. The Authority has concluded that:

1. implementation of the amendment proposal will better facilitate the achievement of the applicable objectives of the CUSC⁶; and
2. directing that the amendment be made is consistent with the Authority's principal objective and statutory duties⁷.

Reasons for the Authority's decision

One of the key characteristics of a modifiable multiparty agreement such as the CUSC is to ensure that any proposed amendments to it are able to be properly assessed and considered by the relevant industry participants. The arrangements should allow for transparent evaluation by industry participants to assess if a Proposed Amendment better facilitates achievement of the applicable CUSC Objectives.

We have concerns that the CUSC governance process does not allow for a considered analysis of alternative amendments that are raised by CUSC Parties in response to consultation. In addition the process sometimes leads to a large number of proposals coming forward which makes assessing which one may best facilitate achievement of the applicable CUSC objectives a difficult task. This is particularly the case when of a number of alternatives more than one may better facilitate achievement of the applicable CUSC objectives.

CAP160 addresses these concerns in a manner which should better facilitate achievement of applicable CUSC Objective (a).

Requiring alternative amendments to be submitted into the Working Group process will ensure that all alternative amendments that are taken forward are properly assessed and evaluated by an expert industry group. We agree with all respondents to the CAP160 consultation that this represents an improvement on the existing arrangements where consultation alternative amendments are often not effectively assessed or analysed.

Abolishing the ability to submit CAA's and introducing WG Consultation Requests should still allow Parties that are unable to participate in the WG process to have an opportunity to feed into it through the WG consultation. So long as WG's are properly chaired and

⁴ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with the section 8 of the CUSC.

⁵ CUSC amendment proposals, amendment reports and representations can be viewed on NGET's website at <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/>

⁶ As set out in Standard Condition C10(1) of NGET's Transmission Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=5327

⁷ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989.

managed, any party that raises a credible request should have it carried forward as a viable alternative. The advantage with the CAP160 process should be that the request will be evaluated by an expert WG and this should allow for more efficient management of the number of alternatives that come forward in the final AR.

We note that a number of safeguards have been built into the CAP160 process to ensure that those unable to participate in WG's are not disenfranchised from the process. Firstly the WG Chair has an over-riding discretion to carry forward any requests as alternatives, even if they do not receive majority vote within the WG. This should ensure that any interest that is not represented among the WG membership is still carried forward via the Chair. As part of the governance code governance review, we have raised concerns regarding the ability of smaller players to engage in the code change process. In light of these concerns, it will be very important for the chair of the WG to ensure that all proposals, including those raised by smaller participants (including smaller renewable participants) are effectively and fairly evaluated. We expect the Panel to effectively manage this enhanced role of the chair to ensure that any interests are not being disenfranchised.

Secondly, a Company consultation will be conducted following submission of the WG Report to the Panel. Parties will therefore have an opportunity to respond to the decision making conclusions of the WG and the Panel will have the option to submit the Amendment(s) back to the WG if necessary. We also note that, notwithstanding these safeguards, Parties nevertheless have the option to raise a new Amendment Proposal at any time which administratively should be no more burdensome than raising a WG Consultation Request. We do not however expect to see Parties falling back on the use of this right as our expectation is that the Panel will ensure the CAP160 process is properly managed.

Implementation/Transition Arrangements

The final AR provides that CAP160 should be implemented, if approved, the following business day after an Authority decision. The proposal also provides that the CAP160 arrangements should apply to any amendments that are currently within the CUSC amendments process but have not as yet proceeded to consultation. We note that the Transmission Access proposals, CAP's 161-166 as well as CAP 167 would be captured by this. For all amendments that have already progressed to consultation, the current CUSC process would apply.

In circumstances where Parties rights and obligations change it is important that Parties are on full notice as to what those changes are and when they come into effect. The CAP160 consultation document clearly detailed the proposed implementation arrangements for CAP160 and associated impacts for other amendments currently being processed, as does the final AR. The CUSC Panel also issued a letter to all CUSC Parties about the potential impact of CAP160 (if implemented) on other existing Amendment Proposals.

We note the comments of one respondent who although supportive of the proposal considers that the CAP160 arrangements should not apply to any amendments that are currently within the CUSC process. The respondents concerns were that some Parties may have chosen not to participate in the CAP 161-167 WG's on the basis that they could raise CAA's.

We agree with the CUSC Panel on this issue. We consider the risk highlighted by the respondent is outweighed by the potential benefits that the CAP 160 process may bring to existing Amendments. It should be more useful and beneficial to industry participants to ensure that any alternative amendments that may be raised to current amendments within the process have an opportunity to be properly analysed and evaluated and that the WG's under the governance of the Panel manage the number of alternatives that ultimately come forward. In addition, no respondents to the CAP160 consultation have indicated that they chose not to participate in any of existing CUSC WG's on the basis that they could raise CAA's. Moreover all other respondents were supportive of both the proposal and the implementation arrangements.

Decision notice

In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority, hereby directs that amendment proposal CAP 160: Improvements to the assessment of Amendments be made.



Mark Feather, Director Industry Codes and Licensing

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