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Dear Mark,

Consultation on Major Policy Reviews and Self-Governance

I am writing to you as the CUSC Amendments Panel Chair on behalf of the CUSC Amendments Panel. Thank you for the opportunity to respond to the above consultation.

To begin with the Panel has some general observations regarding the legality of the proposed approach. The Panel would like to be assured by the Authority that it is legally permitted to introduce its proposed approach. In particular, is the Authority able to:-

i) abdicate its role (as set out in the Acts) for 'self-governance' amendments in terms of 'low' customer impact; and
ii) act as 'judge', 'jury' and 'executioner' with respect to amendments associated with Major Policy Review items?

The Panel believes that the onus is on the Authority, as the proposer, to be clear that this change is legally permissible. The reason why the Panel is concerned about this is because if, subsequently, it turns out not to be the case then it would call into question the legality of all changes made (under the 'new' regime) to that date. Such a scenario could be extremely disruptive to the ongoing operation of the CUSC at that time if these 'invalidated' changes are required to be 'backed-out' of the CUSC.

Turning to the specifics, the Panel is supportive of the proposal to introduce a three path model to address large scale policy reviews which cross codes and licences, as well as allowing self-governance where appropriate, provided appropriate checks and balances are established under any new regime. In particular it is important to ensure where Ofgem originate a proposal under Path 1 that any "legally binding conclusions" placing obligations on National Grid or the Panel do not limit the scope of any merits based appeal that may be available to affected parties.

From the consultation proposals it is unclear how, in practice, the major policy review process will differ from existing arrangements. Considering Transmission Access Review under the current framework, this was initiated by an Ofgem/BERR review which resulted in three principal approaches being identified. These three approaches were subsequently taken forward as the current six CUSC modifications and Charging Methodology changes. Depending on the detail, the Panel would assume that the proposed major policy review should offer a formal mechanism to review such fundamental changes. It would be helpful for Ofgem to use the Transmission Access Review as an example to demonstrate how the process of major policy review would work in practice (including what legally binding

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conclusions might have been made). It is important that the detail and principles for how the process would work is developed in conjunction with the industry to ensure that the most appropriate arrangements are implemented.

Following conclusion of any major policy review it is vital that the industry continues to take a leading role in the development of amendments, and conclusions from the major policy review must be flexible enough to allow for this. It should continue to be the role of the Panel to oversee development of amendment proposals, ensuring that code parties - being those possessing the necessary expertise and experience - continue to be at the centre of developments. This may facilitate greater Ofgem independence in evaluation of completed proposals, which would be more difficult if Ofgem were also responsible for drafting amendments. It is also important that the Panel, in considering the resultant proposals following a major policy review, are able to act independently rather than being bound by any licence obligation to support specific amendments brought forward via the new process. We do not believe that it is appropriate to have a moratorium on relevant proposals during or after a review as this goes against the fundamental principle of the code that any CUSC party can raise an amendment to the CUSC.

The Panel supports the principle that self-governance of arrangements would introduce benefits of cost and time efficiency. However we would stress that self-governance should only be used for modifications of limited material impact and in practice we consider that most modifications should continue through the existing process (Path 2). We believe that current voting arrangements under the CUSC are appropriate for considering amendments under self-governance, and are unsure that changing these arrangements would be justifiable in terms of the additional cost that would be incurred through the introduction of alternative voting mechanisms.

It is vital under the framework proposed that a clear definition for each path is developed to ensure that it is possible for all industry participants, and the Panel, to anticipate the route through which proposals will be developed. The Panel believes that it would be appropriate for the Panel to undertake the role of filtering proposals, minimising the administrative burden placed on Ofgem. Ofgem may retain the right to veto decisions; however the Panel would welcome clarity on the circumstances under which such a veto may be made, similar to the urgency criteria. The Panel believes that within the annual corporate statement Ofgem should indicate forward looking areas for consideration under major policy review, including expectation in terms of scale and timing for the review similar to that which is set out for price control reviews. This would facilitate filtering of amendments accordingly, as well as allowing appropriate resource planning by the industry. Any additional amendments raised which the Panel would consider as major could be referred to Ofgem for advice over how to proceed[1]. The Panel further considers that there should be a means for reclassification of amendment proposals in the event that the nature of a proposal changes during development. Such reclassification should be based on a clearly defined criteria, and should only apply to "downgrading" of proposals (for instance from Path 2 to Path 3).

To conclude, the Panel, subject to it being legally permissible and the appropriate checks and balances having been put in place; supports the principle of introducing formal arrangements to deal with fundamental policy changes as well as a means for allowing amendments with limited material impact to be processed via self-governance. However, we would consider that most amendment proposals would continue to be processed through the existing amendment process. Finally, as previously stated we would welcome further clarification regarding the definitions, process and how the three path model will work in practice.

If you wish to discuss further please do not hesitate to contact me or Carole Hook on 01926 654211 or carole.hook@uk.ngrid.com.

Yours sincerely

Alison Kay (by email)

[1] This occurred under current arrangements for instance with a referral being made when CAP147 was raised