

Amendment proposal:	Connection and Use of System Code (CUSC): Removal of CUSC Amendments Panel's ability to raise Amendment Proposals (CAP177)		
Decision:	The Authority ¹ has decided to reject this proposal		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the CUSC and other interested parties		
Date of publication:	27 January 2010	Implementation Date:	N/A

Background to the amendment proposal

Under section 8.15.1 of CUSC, the CUSC Amendments Panel (the "Panel") may raise a modification proposal following a post-implementation review when an amendment has been made based on an Urgent Amendment Proposal, or in accordance with the Transmission Licence, outside the standard amendment procedure.

The CUSC Governance Standing Group ("GSG") has recently reviewed some of the provisions of the governance process within the CUSC, in particular focusing on urgency. The GSG questioned the appropriateness of the Panel being able to both raise and make a recommendation on a proposal, which can potentially give the perception of a foregone conclusion. The GSG concluded that if, following such a post implementation review, an Amendment Proposal was deemed to be required, the onus should be on a party to the CUSC (or BSC Party or National Consumer Council) to raise such amendment.

The amendment proposal

In line with the recommendation of the GSG, National Grid Electricity Transmission (NGET) raised CAP177 to remove the Panel's ability to raise modification proposals.

Instead, where a post-implementation review concludes that an amendment proposal is necessary, it will be for either a CUSC party, BSC party or the National Consumer Council to raise a modification proposal.

CUSC Panel² recommendation

On 27 November 2009, the CUSC Panel voted unanimously in favour of CAP177, as better facilitating Applicable Objective (a). The panel considered that it would improve procedural efficiency, thereby facilitating the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence. In the context of CAP177 these obligations relate to the establishment and operation of procedures for the modification of the CUSC, as set out in Standard Condition C10.

The Authority's decision

The Authority has considered the issues raised by CAP177 and the final Amendment Report (AR) dated 18 December 2009. The Authority has considered and taken into account the responses to NGET's consultation on CAP177 which are attached to the AR³.

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.

² The CUSC Panel is established and constituted from time to time pursuant to and in accordance with the section 8 of the CUSC.

The Authority has concluded that implementation of the amendment proposal will not better facilitate the achievement of the applicable objectives of the CUSC⁴.

Reasons for the Authority's decision

Whilst we note that the provisions to which this proposal relate contain some ambiguity (including a reference to paragraph 8.21.8, which does not exist in the CUSC), in our view, this does not outweigh the issues with not amending the CUSC discussed below.

First, the provision of paragraph 8.15.1 does not oblige the Panel to raise a modification proposal; it simply allows them the opportunity. This means that the Panel can exercise its discretion in determining whether or not to raise a proposal. In our view, there is insufficient justification provided for removing this flexibility and narrowing the scope for modification proposals to be raised.

Further, we consider that restricting abilities to raise modification proposals (even if the situations provided for arise infrequently) would not better facilitate any of the Applicable CUSC Objectives. For example, there may be modifications which are useful and would better facilitate an Applicable Objective, but are minor amendments and therefore a single CUSC Party proposer is not forthcoming. The most expeditious way of progressing such a modification proposal and ensuring that advantages are not lost or delayed would be to retain a Panel power to raise a proposal.

Lastly, we refute the view that the Panel would be (or seen to be) pre-judging its recommendation. Just because the Panel has raised a proposal does not mean that it will not duly consider any reports or representations made to it prior to recommendation stage. It will remain open for the Panel to consider any alternatives, or even to decide not to recommend the proposal in its final report to the Authority, if in its view the modification does not on balance better facilitate the Applicable Objectives. This is safeguarded by requirements to act impartially (see paragraph 8.2.4.1 of CUSC).

Accordingly, for the reasons set out above, in our view, CAP177 does not better facilitate Applicable CUSC Objectives and is therefore rejected.

Mark Cox,
Associate Partner, Industry Codes and Licensing

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

³ CUSC amendment proposals, amendment reports and representations can be viewed on NGET's website at <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/>

⁴ As set out in Standard Condition C10(1) of NGET's Transmission Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=5327