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| Modification proposal: | <b>Connection &amp; Use of System Code (CUSC) 272: Aligning Condition C5 and C10 of the CUSC to the licence changes introduced by the Code Governance Review Phase 3 (CMP272)</b> |                      |               |
| Decision:              | The Authority <sup>1</sup> directs that this modification be made <sup>2</sup>  |                      |               |
| Target audience:       | National Grid Electricity Transmission Plc (NGET), Parties to the CUSC, the CUSC Panel and other interested parties   |                      |               |
| Date of publication:   | 7 March 2017  | Implementation date: | 14 March 2017 |

## Background

Ofgem's Code Governance Review (CGR)<sup>3</sup> sought to update and improve the industry code governance arrangements to ensure that they could effectively meet the challenges facing the industry and aimed to reduce complexity to ensure transparency and accessibility for all industry participants. Our CGR final proposals introduced, among other things, the Significant Code Review (SCR) process<sup>4</sup>. A second phase of the CGR (CGR2) focused on extending the CGR conclusions to further industry codes.<sup>5</sup>

In May 2015, we published an open letter setting out our views on issues facing code governance arrangements and seeking responses from industry. This was followed in October 2015 by our Initial Proposals on the third phase of CGR (CGR3)<sup>6</sup>. Our CGR3 final proposals<sup>7</sup> built on arrangements introduced by CGR and CGR2. Licence modifications giving effect to our CGR3 final proposals came into force on 10 August 2016, with the requirement that the consequential changes to industry codes would be in place by 31 March 2017. The changes required to the governance arrangements of the CUSC<sup>8</sup> relate to the revised SCR process.

## The modification proposal

National Grid Electricity Transmission plc (the Proposer) raised CUSC modification proposal CMP272: Aligning Condition C5<sup>9</sup> and C10<sup>10</sup> of the CUSC to the licence changes introduced by the Code Governance Review Phase 3<sup>11</sup> (CMP272) on 14 December 2016. CMP272 seeks to implement changes to the CUSC modification process in respect of an

<sup>1</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

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

<sup>3</sup> CGR final proposals are here: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-final-proposals-4310> The CGR focussed primarily on the BSC, CUSC and UNC.

<sup>4</sup> A process which provides a role for Ofgem to lead complex changes to the industry codes in a holistic manner.

<sup>5</sup> We published our CGR2 final proposals in March 2013:

[https://www.ofgem.gov.uk/sites/default/files/docs/2013/03/cgr-2---final-proposals\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2013/03/cgr-2---final-proposals_0.pdf)

<sup>6</sup> <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-3-initial-proposals>

<sup>7</sup> [https://www.ofgem.gov.uk/system/files/docs/2016/03/code\\_governance\\_review\\_phase\\_3\\_final\\_proposals\\_2.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/03/code_governance_review_phase_3_final_proposals_2.pdf)

<sup>8</sup> Connection & Use of System Code: <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/The-CUSC/>

<sup>9</sup> Use of System Charging Methodology

<sup>10</sup> Connection and Use of System Code (CUSC)

<sup>11</sup> Whilst this was the title given to the code modification proposal by the Proposer, we note that the conditions C5 and C10 referred to are standard conditions of NGET's electricity transmission licence and not provisions of the CUSC.

SCR<sup>12</sup>. Specifically, CMP272 proposes changes to Section 8<sup>13</sup> and Section 11<sup>14</sup> of the CUSC to reflect that the Authority may:

- raise a CUSC Modification Proposal(s) following the end of an SCR;
- lead an end-to-end CUSC SCR modification; and
- issue a “backstop direction” which requires an SCR-related CUSC modification proposal or alternative modification proposal to be withdrawn, causing the SCR review phase to recommence.

The proposal also includes provisions relating to when an SCR phase has ended (or maybe deemed to be ended).

The Proposer considered that CMP272 should follow the self-governance procedure. This was not agreed to by the CUSC Panel<sup>15</sup> as the majority view of the CUSC Panel was that the modification did not meet the self-governance criteria. The CUSC Panel decided that CMP272 should be progressed by a work group.

On 19 December 2016, we received a request that CMP272 should follow an urgent timetable and that this recommendation was supported by the majority of the CUSC Panel. On 20 December 2016, we approved<sup>16</sup> this request.

The Proposer considers that CMP272 will better facilitate CUSC relevant objective<sup>17</sup> (a)<sup>18</sup> by ensuring that the CUSC correctly reflects the conditions under which the Authority can raise, or direct the licensee to raise, modifications. The Proposer also considers that it will better facilitate objective (d)<sup>19</sup> by ensuring that the CUSC accurately reflects the provisions set out in Standard Licence Conditions to permit the Authority to raise modification proposals and SCR processes, ensuring such modifications proposals are progressed efficiently and effectively.

### **CUSC Panel recommendation**

At the CUSC Panel meeting on 24 February 2017, the CUSC Panel Members unanimously considered that CMP272 better facilitated the CUSC objectives and the Panel therefore recommend its approval. The Panel Members unanimously considered that CMP272 better facilitated CUSC objectives (a) and (d) and a majority considered that it better facilitated CUSC objective (c)<sup>20</sup>.

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<sup>12</sup> CGR3 also introduced a new Applicable CUSC Objective: “*promoting efficiency in the implementation and administration of the CUSC arrangements*”. The introduction of this new objective is not subject to CMP272 as the change impacts only the licence and not the CUSC. Therefore, despite its title, there are no changes to the CUSC resulting from the change to C5 of the licence.

<sup>13</sup> CUSC Modification

<sup>14</sup> Interpretation and Definitions

<sup>15</sup> The CUSC Panel is established and constituted pursuant to and in accordance with Section 8 of the CUSC.

<sup>16</sup> Ofgem Approval of Urgency Request: <https://www.ofgem.gov.uk/publications-and-updates/cusc-modification-panel-request-urgency-cmp272-aligning-condition-c5-and-c10-cusc-licence-changes-introduced-code-governance-phase-3>

<sup>17</sup> The applicable CUSC objectives are set out in standard condition C10(1) of NGET’s Electricity Transmission Licence: <https://epr.ofgem.gov.uk>

<sup>18</sup> The efficient discharge by the licensee of the obligations imposed on it under the Act and by this licence.

<sup>19</sup> Promoting efficiency in the implementation and administration of the CUSC arrangements.

<sup>20</sup> Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.

## **Our decision**

We have considered the issues raised by CMP272 and the Final Modification Report (FMR) dated 28 February 2017. We have considered and taken into account the responses to the industry consultations which are attached to the FMR<sup>21</sup>. We have concluded that:

- implementation of CMP272 will better facilitate the achievement of the applicable objectives of the CUSC; and
- directing that CMP272 be made is consistent with our principal objective and statutory duties.<sup>22</sup>

## **Reasons for our decision**

We consider that CMP272 better facilitates CUSC objectives (a) and (d) and has a neutral impact on the other objectives.

### ***(a) the efficient discharge by the licensee of the obligations imposed upon it by this licence***

We agree with the Proposer, consultation respondents and the Panel Members that CMP272 better facilitates objective (a). Licence modifications introducing the CGR3 governance changes into the CUSC governance arrangements are now in force. Relevant licensees must ensure that these licence provisions are efficiently discharged. The changes proposed by CMP272 will ensure that the relevant licensee can discharge its licence obligations by bringing the CUSC modification procedures into line with the CGR3 governance changes (as reflected in the licence).

### ***(c) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency***

We do not agree with the view expressed by the work group and the majority of Panel Members that this objective is better facilitated by CMP272. We consider that it has a neutral impact on that CUSC objective.

As set out in our guidance on the launch and conduct of SCRs,<sup>23</sup> we may consider launching an SCR as a result of developments in EU law. However, we see no reason to consider that the changes proposed by CMP272 of themselves better facilitate compliance with this objective. We are aware of no provision of the Electricity Regulation relevant to the implementation of CMP272. Nor are we aware of any relevant binding decision of the European Commission or of the Agency for the Cooperation of Energy Regulators. We note that the FMR does not set out the reasons why the work group and Panel considered this objective to be better facilitated.

### ***(d) promoting efficiency in the implementation and administration of the CUSC arrangements***

We agree with the Proposer, consultation respondents and the Panel Members that CMP272 better facilitates relevant objective (d). The new SCR arrangements will help ensure that there is an effective process in place to deliver complex modifications to the

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<sup>21</sup> These can be found at <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP272/>

<sup>22</sup> 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.

<sup>23</sup> <https://www.ofgem.gov.uk/publications-and-updates/ofgem-guidance-launch-and-conduct-significant-code-reviews>

industry codes. When undertaking an SCR, we would seek to ensure effective engagement and collaboration with industry, including code panels.

In addition, the ability for us to run an end-to-end SCR process and to direct timetables will drive forward the implementation of our SCR conclusions, thereby improving efficiency in the administration of the CUSC. By providing a mechanism for us to lead the drafting of code modification text alongside consultation with industry may provide a way of working through potential implementation issues earlier in the process thereby better facilitating the administration of the CUSC.

### **Legal text drafting errors**

In making our decision we note that there are errors in the legal text set out in the FMR. In particular:

- 8.17A.1: In work group discussions, it was agreed that the words "pursuant to 8.17A.1(a)" should be deleted, however, "or, pursuant to 8.17A.1(a)" has been removed. Deleting the word "or" changes the meaning of this paragraph. The drafting should reflect that we are able to raise a modification proposal or direct the licensee to raise a modification proposal if a change is required by EU law or if the change is in respect of an SCR.
- 8.17.6A: In this paragraph reference to "8.17C.1" incorrectly reads "8.17.C,1".
- 8.17.6A: The word "issue" in the first line should read as "issues".

It is the licensee's responsibility to ensure that the requirements of the licence are correctly reflected in the code and that typographical errors are not included in legal text. We consider that these errors should be corrected by way of a housekeeping modification as soon as is reasonably practicable.

### **Decision notice**

In accordance with Standard Condition C10 of NGET's Electricity Transmission Licence, the Authority hereby directs that modification proposal CMP272: 'Aligning Condition C5 and C10 of the CUSC to the licence changes introduced by the Code Governance Review Phase 3' be made.

**Lesley Nugent**  
**Head, Industry Codes & Licensing**

Signed on behalf of the Authority and authorised for that purpose