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Date: 17 April 2019

Dear Trisha,

**Authority decision to send back CUSC modification proposal CMP285 'CUSC Governance Reform – Leveling the Playing Field'**

On 12 March 2019, the CUSC Panel submitted a Final Modification Report (FMR) for CUSC modification proposal CMP285 'CUSC Governance Reform – Leveling the Playing Field' to the Authority.<sup>1</sup>

We have decided that we cannot form an opinion on CMP285 based on the FMR as submitted. We therefore direct that the FMR is revised and resubmitted to take into account our concerns.

We have identified the following deficiencies in the FMR:

1. The description of the modification is unclear. Whilst there is reference to the original proposal in the FMR and the discussions that were had at different stages, there is no clear explanation of what is included overall.
2. The anticipated effect of introducing group voting is not fully explained. Nor is it explained as to how the Modification will encourage higher engagement in the voting process.
3. The process of how the Code Administrator will publish a list of Users and their Voting Groups is not clear. The FMR refers to ultimate parent companies declaring all CUSC Signatories under their direct or indirect control, and this being published as part of the CUSC signatory list. This is not included in the legal text and we therefore assume that this is no longer part of the Proposal. Please clarify.
4. The process of appointing independent panel members is not clear. In particular, the legal text and FMR are inconsistent on the role of the Panel Chair and the Authority. The FMR refers to the importance of the term 'independent', but the definition in the Code is circular. The arrangements around remuneration of independent panel members is also not explained in the Code.
5. It is not clear to us that the discussions, as set out in the FMR, around requirements to provide information in respect of interests in CUSC parties is correctly reflected in the legal text. More clarity on this would be welcome.

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<sup>1</sup> <https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/cusc-governance-reform-leveling-playing>

6. The legal text does not reflect, in all areas, the proposals set out in the FMR. We attach at Appendix 1, a table setting out our concerns.

We therefore direct that additional steps are undertaken to address these concerns. A revised FMR should –

1. Provide us with a clear description of the individual elements of the modification, (specifically; grouping votes, independent model, consecutive terms, alternates, transparency) and explain what each element of the modification is seeking to achieve.
2. Provide in more detail the anticipated effect of introducing group voting; and how it is envisaged that the modification will encourage higher engagement in the voting process.
3. Clarify the process around the appointment and reappointment of independent panel members and clarify what is envisaged with respect to the remuneration of the member.
4. Clarify the requirement on Panel members to provide information about interests in other CUSC parties and to whom this requirement will apply to and its effect.
5. Respond to the issues raised at Table 1 below.

We require the above information in order that we can assess: (a) whether the proposed Modification better facilitates the Applicable CUSC Objectives; and (b) whether what is intended is reflected in the legal text.

After addressing the issues discussed above, and revising the FMR accordingly, the CUSC Panel should re-submit it to us for decision as soon as practicable.

Yours sincerely,

**Lesley Nugent**  
**Deputy Director, Licensing Frameworks**

**Table 1**

<b>Option</b>	<b>Issue</b>
Group voting	We note from the FMR that there was some discussion around how CUSC Signatories are to be grouped together. It is not clear from the FMR which approach was preferred, but we assume from the draft legal text that the concept of Affiliate (by reference to definitions in the Companies Act 1985) is what is proposed <sup>2</sup> . Please confirm.
Group voting	The definition of 'affiliate' in section 11 does not apply in respect of group voting. We understand that the intention is that it should.
Group voting	8A.3.1.5(b) refers to the CA selecting voting papers at random. Further detail on this would be helpful.
Alternates	<p>The drafting at para 8.7.5 is unclear. It could apply to all Alternates or the Alternate that will attend the Panel meeting.</p> <p>We also note that there is discussion in the FMR of Alternates remaining engaged in the Panel so that they can actively contribute when required. However, this is not reflected in the legal text so we assume that this approach is not part of the modification proposal. Please confirm.</p>
Alternates	It is unclear to us why 8.7.5(b)(ii) has been limited to only 'Other Panel Members'.

<sup>2</sup> The draft legal text refers to 'Affiliate' which adopts the definition set out in the (now repealed) Companies Act 1985. We note that this definition includes companies with majority voting rights in a subsidiary, as well as companies that have the right to appoint or remove a majority of the subsidiary board members, and / or is able to control the voting rights in a subsidiary.