

Modification proposal:	Connection and Use of System Code (CUSC) CMP285: CUSC Governance Reform - Levelling the Playing Field (CMP285)		
Decision:	The Authority ¹ directs that CMP285 WACM1 be made ²		
Target audience:	National Grid Electricity System Operator Limited (NGESO), Parties to the CUSC, the CUSC Panel and other interested parties		
Date of publication:	4 July 2019	Implementation date:	5 July 2019

Background

The CUSC panel make up includes a Panel Chair, a consumer representative and not more than seven representatives of Users.³ The process for Users to elect Panel members is set out at Annex 8A⁴ of Section 8 of the CUSC. This process allows each User to submit one voting paper in support of a User candidate. The seven candidates with the highest number of votes are elected as a User Panel member and the next five elected as Alternate members. Appointment as a User Panel member is for two years.

Concerns have been raised that the current CUSC panel composition and voting process could be viewed as not delivering a Panel that represents all CUSC parties. For example, larger companies are able to cast more than one vote due to their subsidiaries also being CUSC parties, which it has been argued could appear to give them greater influence over the voting outcome compared to other parties. There is also a concern that smaller parties are not exercising their right to vote.

Concerns have also been expressed related to transparency, as no detail or summary of the CUSC Panel election is available to industry parties after the conclusion of the election process.

The modification proposal

UK Power Reserve (the Proposer) raised CMP285 with the Panel on 28 July 2017. CMP285 aims to reform the CUSC governance arrangements to enhance the independence and diversity of panel members and ensure wider engagement from CUSC signatories.

The Proposer's solution consists of the following:

- Grouping votes: CUSC signatories to be grouped under each parent company and limiting the number of votes that a parent company can cast to a maximum of four.

¹ 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.

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

³ 'User' is defined in CUSC as a person who is a party to the CUSC Framework Agreement other than National Grid Electricity System Operator Limited.

⁴ Election of Users' Panel Members - <https://www.nationalgrideso.com/document/91381/download>

- Transparency: publish business interests of Panel election candidates and members and the outcome of CUSC Panel Elections for greater transparency.
- Consecutive terms: limit consecutive terms to two so that User Panel members can only be appointed for a total of four years.
- Independence: introduce and appoint two, remunerated, independent members to fill any perceived knowledge or experience gaps in the CUSC panel membership following a CUSC Panel election. This would also result in a change to the panel composition of five User elected Panel members plus two independent members compared to the current seven elected members.
- Alternatives: codify the informal rota of panel member Alternates.

The Proposer considers that engagement by smaller or new CUSC parties will be improved because of CMP285 as their votes will count towards a greater percentage of the overall total compared to current arrangements. The Proposer's view is that small or new parties to the CUSC will participate more in the election process if they believe their vote will affect the outcome of the election. They also consider that the modification would give potential for greater diversity of backgrounds on the CUSC Panel and that this will increase interest, confidence and perceived independence of the Panel. The Proposer also considers this change will align the CUSC with, in its view, some of the best practices within the governance of the Balancing and Settlement Code.

The Proposer's view is that the outcome of the panel election vote should be published by the CUSC code administrator to improve transparency. To further enhance transparency candidates for User Panel members must provide, among other things, a declaration of shares they own in any CUSC party or CUSC parties of a total aggregate value of over £10k.⁵

Further, limiting the tenure of a User Panel member to two consecutive terms (i.e. a total of four years) should, in the Proposer's view, result in greater panel diversity and build a greater base of industry expertise by having a wider group of individuals with experience of serving on the CUSC Panel.

It is the view of the Proposer that two independent Panel members could be appointed following the CUSC Panel election, if needed, to fill any knowledge gaps. The Proposer intends National Grid Electricity System Operator would be responsible for appointing the independent members and that the two independent members are remunerated.

The Proposer believes that the informal alternate panel member rota system has merit and should be formalised into the text of the Code.

Workgroup Alternative Code Modifications (WACMs)

There were originally eleven WACMs put forward through the workgroup process. On 25 October 2018, the Proposer and Workgroup discussions led to reducing the eleven WACMs to six plus the Proposer's original modification. The six WACMs comprise a combination of the elements that make up the original modification. The six WACMs are as follows:

WACM 1: Grouping votes, alternates, and transparency proposals.

WACM 2: Grouping votes, independents, alternates and transparency proposals.

WACM 3: Independents, alternates and transparency proposals.

⁵ As per paragraph 8.3.4(e) of draft legal text

WACM 4: Independents, consecutive terms, alternates, and transparency proposals.
WACM 5: Grouping votes, consecutive terms, alternates, transparency proposals.
WACM 6: Alternates and transparency proposals.⁶

The Final Modification Report (FMR) for CMP285 was submitted to us on 12 March 2019. On 17 April 2019 (our April letter), we directed that the CMP285 Final Modification Report (FMR) should be revised and resubmitted to us, following further clarification and explanation on the individual elements of the modification.⁷

CUSC Panel⁸ recommendation

A special CUSC Panel meeting was held on 17 May 2019 to consider the revised FMR. At this meeting a vote was taken as to whether the Original and WACMs better facilitate the relevant objectives.

The Panel unanimously considered that WACM6 better facilitates the applicable CUSC objectives, and a majority considered that WACM1 also better facilitated the applicable CUSC objectives. The other options (the Original proposal, WACMs 2, 3, 4 and 5) all received support from a minority of the Panel.

In voting on which they considered to be the best option, one Panel member was in favour of the Original, two for each of WACM 1 and WACM 2 and four members were in favour of WACM 6. The Panel members' views are set out in detail in the FMR.

Our decision

We have considered the issues raised by the modification proposal, WACMs 1-6 and the FMR. We have considered and taken into account the responses to the industry consultations on the modification proposal, which are attached to the FMR⁹. We have concluded that:

- implementation of WACM1 and WACM6 would better facilitate the achievement of the applicable objectives of the CUSC;¹⁰
- WACM1 will best facilitate the achievement of the applicable objectives of the CUSC; and
- directing that CMP285 WACM1 be made is consistent with our principal objective and statutory duties.¹¹

Reasons for our decision

We consider WACM1 to best facilitate CUSC objective (d) and have a neutral impact on the other objectives.

⁶ WACM 6 was raised by EDF Energy Limited and was originally the 11th alternative before the Proposer decided to withdraw four of his ten alternatives and renumber the remaining alternatives.

⁷ <https://www.ofgem.gov.uk/publications-and-updates/authoritys-decision-send-back-cusc-modification-proposal-cmp285>

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

⁹ CUSC modification proposals, modification reports and representations can be viewed on NGENSO's website at: <https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc>

¹⁰ As set out in Standard Condition C10(1) of the electricity Transmission Licence, see: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

¹¹ 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 as amended.

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

We consider that publication of panel election outcomes should increase transparency in the CUSC panel election process. Opening the outcome of the election to scrutiny may encourage participation in the election process as it should allow Users to better understand the effect of any vote they cast. For this reason, we consider this proposal better facilitates this objective.

Publishing information on CUSC panel candidates, setting out their interests in CUSC parties (and other interests), should allow Users to make more informed voting decisions. However, we expect the Code Administrator to provide clear guidance to potential panel User candidates about the information they are required to provide and how this information will be treated. We also expect the Code Administrator to monitor and keep under review if this requirement impacts the number and type of User that stands for election.

Codifying the informal alternate panel member rota system should improve efficiency in the implementation and administration of the CUSC by ensuring these arrangements are transparent. It should also mean that a larger number of Alternate members have the opportunity to attend Panel. We note that this proposal codifies the current working practice of the CUSC.

We have considered the proposal to introduce group voting to CUSC and have carefully taken into account the views of respondents and the CUSC Panel. Overall, we agree that the proposal should better facilitate this objective. Limiting the number of votes of a company group to a maximum of four may encourage more CUSC parties to participate in the process. Given the evidence of the low-level of participation by CUSC parties in the election process presented in the FMR, we consider that changing the voting process may re-engage CUSC users and by reducing the overall number of votes cast may allow them to more clearly recognise the impact of their vote or votes on the outcome of the election. This proposal alongside publication of the outcome of the election may increase CUSC User participation.

We consider we have not been provided sufficient evidence to demonstrate that the proposals to limit consecutive terms would better facilitate this objective. Whilst we recognise the aim is to achieve greater panel diversity and to build a greater base of industry expertise by having a wider group of individuals, we also note that limiting the number of terms that a panel member can serve on the Panel could create a risk of not having sufficient Panel nominations for Users to vote on. We also note that this proposal would restrict the possible candidates that CUSC parties may choose to vote for.

We do not consider the proposal to appoint two independent members would better facilitate this objective compared to the current CUSC arrangements. We note that the CUSC includes provisions that allow the Authority to appoint a further CUSC panel member where, in our opinion, there is a class or category of person who have interests in respect of the CUSC but whose interests are not reflected in the composition of the CUSC Panel.¹² We note the comments by respondents to the CA consultation that the appointment of independent members to the CUSC would increase costs in the administration of these arrangements and we share these concerns. Given that we may appoint a further member, we do not consider that this proposal will better facilitate this objective. We also note CUSC panel members are required to act impartially.¹³ This

¹² Section 8.4.3 of CUSC

¹³ Section 8.3.4 (a)(i) of CUSC.

change would also result in two User Panel members elected by CUSC parties being replaced by two members appointed by NGESO.

Other Issues

Further to our April letter (in which we asked for clarification of some aspects of the proposed changes), we consider that the definition of Affiliate at section 11 of CUSC should be modified to make it clear it applies to Users for the purposes of the definition of Voting Group referred to in Annex 8A. The legal text¹⁴ and the FMR demonstrate that the intention is that the definition of Affiliate will apply for this purpose, but the definition itself is not clear on this. We therefore expect this clarification to be made to the legal text through a fast track self-governance modification as soon as reasonably possible.

We note the aim of this modification includes ensuring wider engagement from CUSC signatories. We support this goal. To achieve this, we expect the Code Administrator to encourage and facilitate CUSC parties, particularly smaller parties, to participate in CUSC governance processes, including voting in the User Panel member election. We also anticipate that the Panel will monitor the activities of the Code Administrator in carrying out this function, and that the Code Administrator will take all reasonable steps to ensure they implement the new processes in a clear way for users (providing guidance where necessary) and that the arrangements operate effectively and efficiently.

The requirement on the Code Administrator is to publish on or around the 20th June each election year a list of Users and their associated voting group. We anticipate that this list will be published shortly for this election year.

Decision notice

In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority, hereby directs that WACM1 of CMP285: CUSC Governance Reform - Levelling the Playing Field be made.

Lesley Nugent

Deputy Director, Licensing Frameworks

Signed on behalf of the Authority and authorised for that purpose

¹⁴ Section 8A3.1.2 of CUSC.