



National Grid

AMENDMENT REPORT

CUSC Proposed Amendment CAP049

Alternative Amendments

The purpose of this report is to assist the Authority in their decision whether to implement Amendment Proposal CAP049

Amendment Ref	CAP050
Issue	1.0
Date of Issue	25 September 2003
Prepared by	National Grid

I DOCUMENT CONTROL**a National Grid Document Control**

Version	Date	Author	Change Reference
0.1	11/9/03	National Grid	Draft for internal comment
0.2	17/9/03	National Grid	Draft for Industry comment
1.0	25/9/03	National Grid	Formal version for submission to the Authority

b Document Location

Nation Grid Website:

<http://www.nationalgrid.com/uk/indinfo/cusc>

c Distribution

Name	Organisation
The Gas and Electricity Markets Authority	Ofgem
CUSC Parties	Various
Panel Members	Various
National Grid Industry Information Website	

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1.0 SUMMARY AND RECOMMENDATION

- 1.1 CAP049 was proposed by National Grid and submitted to the Amendments Panel for consideration at their meeting on 16th May 2003. The Amendments Panel determined that CAP049 should be considered by the Governance Standing Group acting as a Working Group and that the Group should report back to the Panel meeting scheduled for 25th July 2003. The Working Group considered the Amendment Proposal by way of correspondence as agreed at the Panel meeting on 16th May 2003 with the Chairman deciding if a meeting of the Group was necessary.
- 1.2 Two Working Group Members made comments on the indicative legal drafting for CAP049 during this consideration and the final legal drafting reflects the majority of those comments. Working Group Members raised no other comments on CAP049. Two Members of the Working Group had concerns about the efficiency of the modus operandi of the Group (essentially proceeding via e-mail correspondence with no meetings) to the extent that they could not support the Report. The Chairman recommended on behalf of the Working Group that CAP049 should proceed to wider Industry consultation following the Panel meeting on 25th July and the Panel agreed with this recommendation.
- 1.3 National Grid received four responses to the CAP049 consultation document. Two respondents agreed that there was a defect in the CUSC and supported the Proposed Amendment. Of the remaining two respondents, one agreed that there was a defect in the CUSC but believed that an alternative amendment would better facilitate the achievement of the Applicable CUSC Objectives and one supported the intention of CAP049 but believed that the legal drafting required some further changes.

National Grid Recommendation

- 1.4 National Grid recommends that CAP049 (revised to take into account the minor comments from the respondent in CR-049-04) be approved for implementation.
- 1.5 It is recommended that the CUSC be modified in line with the revised CAP049 10 days after the Authority's decision.

2.0 PURPOSE AND SCOPE OF THE REPORT

- 2.1 This Amendment Report has been prepared and issued by National Grid under the rules and procedures specified in the Connection and Use of System Code (CUSC) as designated by the Secretary of State. It addresses issues relating to changes to the CUSC proposed in Amendment Proposal CAP049.
- 2.2 Further to the submission of Amendment Proposal CAP049 (see Annex 1) and the subsequent wider industry consultation that was undertaken by National Grid, this document is addressed and furnished to the Gas and Electricity Markets Authority ("the Authority") in order to assist them in their decision whether to implement Amendment Proposal CAP049.
- 2.3 This document outlines the nature of the CUSC changes that are proposed. It incorporates National Grid's recommendations to the Authority concerning the Amendment. Copies of all representations received in response to the

consultation have also been included and a 'summary' of the representations received is also provided. Copies of each of the responses to the consultation are included as Annex 3 to this document.

- 2.4 This Amendment Report has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid website, at <http://www.nationalgrid.com/uk/indinfo/cusc>

3.0 THE PROPOSED AMENDMENT

- 3.1 CAP049 proposes to amend the definition of Alternative Amendments contained in the CUSC to make clear that Alternative Amendments may be developed by a Working Group as well as being put forward during industry consultation. Two new definitions will also be added to section 11 to define two new types of Alternative Amendment, namely a "Working Group Alternative Amendment" and a "Consultation Alternative Amendment". National Grid will carry out a separate consultation on any Consultation Alternative Amendments received, but further Consultation Alternative Amendments will not be accepted during this period. Consultation Alternative Amendments must be transparent and it will not be possible to apply the confidentiality provisions of CUSC to them. The definition of "Alternative Amendment" will be modified so that it may be used in CUSC where appropriate to mean collectively any Working Group or Consultation Alternative Amendment Proposal.
- 3.2 Following consideration of a number of CUSC Amendment Proposals to date, it has become apparent that the definition of "Alternative Amendments" (as currently set out in Paragraph 8.20.2 (e) of the CUSC) is incorrect as it implies that an Alternative Amendment may only be developed during the consultation stage and not raised or developed by a Working Group. However, Paragraph 8.17.1 of the CUSC indicates that the key role of a working Group is to assist the Panel in "evaluating whether an Amendment Proposal better facilitates achieving the Applicable CUSC Objectives and whether an Alternative Amendment would, as compared with the Amendment Proposal, better facilitate achieving the Applicable CUSC Objectives in relation to the issue or defect identified in the Amendment Proposal." The Governance Standing Group recommended that the CUSC should be clarified to make it clear that Working Groups should be free to develop Alternative Amendments and the CUSC Amendments Panel agreed with this recommendation.
- 3.3 In addition, at present there is no provision for Alternative Amendments that are put forward by individual CUSC Parties at the end of the consultation period to be seen and commented on by other CUSC Parties before the Amendment Report stage. CAP049 will enable CUSC Parties to consider such Consultation Alternative Amendments. The proposal also confines the number of Consultation Amendment Proposals that CUSC Parties can put forward to the first consultation phase so that the process is not prolonged indefinitely. In the interests of transparency, the proposal will also not permit Consultation Alternative Amendments to be subject to the confidentiality provisions within CUSC.

Working Group Discussions

- 3.4 The Panel agreed that the Working Group could consider the Amendment Proposals in correspondence initially and the Chairman should decide whether there was a need for a meeting of the Group in the light of the comments received by Working Group Members. It was agreed that the Working Group would generally adopt the working practices of the Governance Standing Group adapted given that the Working Group was proceeding by correspondence. The Chairman decided that there was no need for a meeting of the Group following the initial comments provided by Members.
- 3.5 The key areas for review by the Group identified in its Terms of Reference were review of the legal drafting provided with the Amendment Proposal and

the consideration of any Alternative Amendments which might better facilitate achievement of the Applicable CUSC Objectives in relation to the issue or defect identified by the original Amendment Proposals.

- 3.6 Comments on the legal drafting for CAP049 were received from two Members of the Working Group. These comments were not substantial and were incorporated into the indicative legal text for CAP049 originally provided by the Proposer, National Grid. One Working Group Member suggested that Paragraph 8.16.4 (c) should be modified to require NGC to identify the timetable for the period of further consultation, if that proved necessary. National Grid explained that if CAP049 were implemented, it would carry out any supplementary consultation within the two month period for consultations under Paragraph 8.16.4 (e) of the CUSC. National Grid would set the initial consultation period to allow for a possible supplementary consultation period and therefore there was no need for a period for the supplementary consultation to be specified in the CUSC. The Working Group Member accepted this explanation. It should be noted that the change proposed to Paragraph 8.20.5 as part of the legal drafting is similar to a housekeeping change.
- 3.7 Two Members of the Working Group had concerns about the efficiency of the modus operandi of the Group (essentially proceeding via e-mail correspondence with no meetings). These two Members believed that there had been inadequate debate on the Amendment Proposal as a result of the working approach adopted such that the Group's Terms of Reference had not been met. As a result they could not support the Working Group Report.

4.0 IMPLEMENTATION AND TIMESCALES

- 4.1 There is no material impact associated with the timing of the implementation of CAP049. It is therefore proposed that implementation takes place with effect from 10 days after the Authority's decision.

5.0 IMPACT ON THE CUSC

- 5.1 The Proposed Amendment would require changes to Paragraphs 8.17, 8.19 and 8.20 of the CUSC, amend the existing definition of "Alternative Amendment" and add two new definitions to section 11 for "Working Group Alternative Amendment" and Consultation Alternative Amendment".
- 5.2 The text required to give effect to the Proposed Amendment is contained at Annex 2 of this document.

6.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

- 6.1 The terms of the Transmission Licence require National Grid to establish and operate procedures for the modification of the CUSC, including the modification procedures themselves, so as to better facilitate achievement of the Applicable CUSC Objectives.
- 6.2 According to the Proposer, amendment of the definition of "Alternative Amendment" (CAP049) would improve clarity and remove uncertainty from the CUSC documentation and hence enable National Grid to more easily and efficiently discharge its obligations under the Act and the Transmission Licence and fulfil its obligations to facilitate competition in the generation and supply of electricity. In addition there would be greater transparency and

scope for the industry to comment on alternative amendments submitted during the consultation phase.

7.0 IMPACT ON CUSC PARTIES

7.1 No impact has been identified on CUSC Parties from the Proposed Amendment detailed in this document.

8.0 IMPACT ON CORE INDUSTRY DOCUMENTS

8.1 The Proposed Amendment will have no impact on Core Industry documents or other Industry documentation.

9.0 ALTERNATIVE AMENDMENTS

Description of Alternative Amendment

9.1 Alternative Amendment A was put forward by the respondent in CR-049-03. The respondent believes that Alternative Amendment A addresses the defect in CUSC in a simpler and more efficient manner and furthermore removes the requirement for the identification and differentiation of two classes of Alternative Amendment as proposed in CAP049.

9.2 The respondent in CR-049-03 was not fully convinced with the Proposer's assertion that CUSC 8.20.2 (e) implies that an Alternative Amendment may only be developed during the consultation stage and not raised or developed by a Working Group. However, the respondent did accept that additional clarity would remove the potential ambiguity.

9.3 The respondent in CR0-049-03 also recognises the concerns of the Proposer that Alternative Amendments which are raised during a consultation stage have generally not been made available to the wider industry for consideration due to the current process timings. However, the respondent also noted that the Proposer NGT acknowledged in the consultation report (section 4.3) that there is sufficient flexibility within the overall 2 month maximum consultation period for a further consultation round should this prove appropriate. The correspondent in CR-049-03 would therefore endorse the judicious setting of consultation periods by the Amendments Panel and NGC as per CUSC 8.16.4. to facilitate this.

Impact of Alternative Amendments on CUSC

9.4 Alternative Amendment A would entail an amendment to Paragraphs 8.16, 8.17, 8.19 and 8.20 of the CUSC only.

Assessment Against Applicable CUSC Objectives

9.5 The respondent in CR-049-03 considers that Alternative Amendment A is a simpler and more efficient approach to the defect in CUSC identified in CAP049. National Grid, however believes it is important that the potential ambiguity in CUSC, relating to the implication that an Alternative Amendment may only be developed during the consultation stage and not raised or developed by a Working Group, should be clarified and this is best achieved by the original Amendment Proposal. National Grid also believes that there are advantages in defining Working Group Alternative Amendments and Consultation Alternative Amendments so that all parties are clear about the

origin of Alternative Amendments at the consultation stage. National Grid therefore believes that CAP049 would enable National Grid to discharge its obligations in CUSC more efficiently and therefore better facilitate achievement of the Applicable CUSC Objectives.

10.0 VIEWS AND REPRESENTATIONS

10.1 This Section contains a summary of the views and representations made by consultees during the consultation period in respect of the Proposed Amendment to the CUSC.

Views of Panel Members

10.2 No formal responses to the CAP049 consultation report were received from Panel Members. However, the Amendments Panel agreed with the Governance Standing Group's assessment in 2002 that an Amendment Proposal should be brought forward to clarify the position on the arrangements for alternative amendments. The Amendments Panel accepted that the Governance Standing Group (acting as a Working Group) had fulfilled its terms of reference in considering CAP049 at its meeting on 25th July and agreed that National Grid should proceed to industry consultation on CAP049.

View of Core Industry Document Owners

10.3 No responses to the CAP049 consultation report were received from Core Industry Document Owners.

Responses to Consultation

10.4 The following table provides an overview of the representations received. Copies of the representations are attached as Annex 3.

Reference	Company	Supportive	Comments
CAP049-CR-01	Powergen UK plc	Yes	Respondent supports CAP049
CAP049-CR-02	EDF Energy	Yes	Respondent supports CAP049
CAP049-CR-03	British Energy	No	Respondent supports the Alternative Amendment
CAP049-CR-04	British Gas	Yes	Respondent supports the Proposed Amendment slightly amended.

10.5 The respondent in CR-049-01 argues that CAP049 will introduce several benefits. Firstly, the proposed amendments would increase the clarity of the current arrangements. In turn, this will allow National Grid to efficiently discharge its obligations. Secondly, this change would undoubtedly increase transparency, which could only serve to increase confidence in the process. Finally, CAP049 would provide greater scope for industry consultation on alternative amendments, whilst safeguarding efficiency by not prolonging such discussions beyond the initial consultation phase. The respondent in CR-049-01 therefore favours the implementation of CAP049.

- 10.6 The respondent in CR-049-02 also supports the implementation of CAP049. The respondent believes that amendment of the definition of Alternative Amendments, such that they may be developed by a working group as well as being put forward at the industry consultation stage, would improve the clarity of the amendment process. The respondent also supports the proposed additional industry consultation on any Alternative Amendments that are raised. At present Ofgem does not have the benefit of hearing industry views on Alternative Amendments and therefore are making decisions based only on the responses from the initial proposal and consultation. An Alternative Amendment could contain significant changes from the original, therefore by allowing a wider industry consultation on any Alternative Amendments gives an opportunity for any concerns to be raised and will enable Ofgem to make a better informed decision.
- 10.7 The respondent in CR-049-03 agrees that there is defect in CUSC that requires a solution but prefers Alternative Amendment A as noted in Paragraph 9 above. In addition, the respondent raises issues relating to multiple "Alternatives" In order to minimise the frequency with which these multiples occur, the respondent argues, requires the Panel and NGC to correctly identify, so far as is reasonably practicable, whether the Amendment Proposal should initially be referred for a period to a Working Group etc to highlight the merits and issues, including the potential for multiple solutions and implementation issues, at an early a stage as possible and before wider industry consultation. The respondent believes that such a process should significantly reduce the risk of a plethora of Alternative Amendments being generated during the consultation phase. As a result of this process the respondent does not believe there is any requirement to differentiate between Working Group and Consultation 'alternatives' as proposed.
- 10.8 In summary the respondent in CR-049-03 believes that subject to the minor amendments to the CUSC identified in the Alternative Amendment A and with further consideration by the Panel and NGC of the amendment procedures, the defect in the CUSC addressed by CAP049 can be achieved more efficiently than the original CAP and hence better facilitate achievement of the Applicable CUSC Objectives compared with the existing CUSC and the original Amendment Proposal.
- 10.9 The respondent in CR-049-04 has proposed a number of minor drafting changes to the original Amendment Proposal and National Grid has accepted these in consultation with the respondent and incorporated those drafting changes into the legal text for CAP049. Two of these drafting changes included additional wording in Paragraphs 8.20.2 (e) and 8.20.2 (f) and in the definitions for the Proposed Amendment in order to make it clear that, in addition to better facilitating the Applicable CUSC Objectives as compared to the original Proposed Amendment, Alternative Amendments would need to better facilitate the Applicable CUSC Objectives as compared with the current version of the CUSC
- 10.10 The respondents in CR-049-03 and CR-049-04 also make a number of general points in relation to their concerns over the way the Working Group for CAP049 conducted its business and indeed what the respondent in CR-049-04 considered a failure by the Panel to oversee good working practice of the CUSC. Since these points are not made in relation to assisting the Authority to determine whether or not to approve CAP049 they are not summarised here, although the Authority may wish to comment on these general points in its decision on CAP049.

11.0 NATIONAL GRID RECOMMENDATION

11.0 National Grid believes that there is a defect in the CUSC which is addressed more effectively by CAP049 in the original Amendment Proposal and therefore will better facilitate achievement of the Applicable CUSC Objectives as compared to the Alternative Amendment A. National Grid therefore recommends approval of CAP049. In addition, National Grid believes that the proposals put forward by the respondent in CR-049-03 for dealing with the issue of multiple “Alternatives” as part of Alternative Amendment A addresses a different issue than the defect in CUSC identified in the context of the original Amendment Proposal. The respondent’s comments on this aspect of CUSC have been summarised and noted in this Amendment Report but not analysed in detail since they are not germane to the issue of whether or not the Authority should approve CAP049 or not.

12.0 COMMENTS ON DRAFT AMENDMENT REPORT

12.1 National Grid received 1 response following the publication of the draft Amendment Report. The following table provides an overview of this representation. A copy of the representation is attached as Annex 4.

Reference	Company	Summary of Comments
CAP049-AR-01	British Gas Trading	Minor comments on draft report

National Grid took into account the minor comments by the respondent in CA049-AR-01 in the final Amendment Report in consultation with the respondent.

Annex 1 - Amendment Proposal Form

CUSC Amendment Proposal Form	CAP049
Title of Amendment Proposal:	
Alternative Amendments	
Description of the Proposed Amendment (mandatory by proposer):	
<p>This Amendment proposes to amend the definition of Alternative Amendments contained in the CUSC to make clear that Alternative Amendments may be developed by a Working Group as well as being put forward during industry consultation. Two new definitions will also be added to section 11 to define two new types of Alternative Amendment, namely a "Working Group Alternative Amendment" and a "Consultation Alternative Amendment". National Grid will carry out a separate consultation on any Consultation Alternative Amendments received, but further Consultation alternative amendments will not be accepted during this period. Consultation Alternative Amendments must be transparent and it will not be possible to apply the confidentiality provisions of CUSC to them. The definition of "Alternative Amendment" will be modified so that it may be used in CUSC where appropriate to mean collectively any Working Group or Consultation Amendment Proposal.</p>	
Description of Issue or Defect that Proposed Amendment seeks to Address (mandatory by proposer):	
<p>Following consideration of a number of CUSC Amendment Proposals to date, it has become apparent that the definition of "Alternative Amendments" (as currently set out in Paragraph 8.20.2 (e) of the CUSC) is incorrect as it implies that an Alternative Amendment may only be developed during the consultation stage and not raised or developed by a Working Group. However, Paragraph 8.17.1 of the CUSC indicates that the key role of a working Group is to assist the Panel in "evaluating whether an Amendment Proposal better facilitates achieving the Applicable CUSC Objectives and whether an Alternative Amendment would, as compared with the Amendment Proposal, better facilitate achieving the Applicable CUSC Objectives in relation to the issue or defect identified in the Amendment Proposal." The Governance Standing Group recommended that the CUSC should be clarified to make it clear that Working Groups should be free to develop Alternative Amendments and the CUSC Amendments Panel agreed with this recommendation.</p> <p>In addition, at present there is no provision for Alternative Amendments that are put forward by individual CUSC Parties at the end of the consultation period to be seen and commented on by CUSC Parties before the Amendment Report stage. This Amendment Proposal will enable CUSC Parties to consider such Consultation Alternative Amendments. The proposal also confines the number of Consultation Amendment Proposals that CUSC Parties can put forward to the first consultation phase so that the process is not prolonged indefinitely. In the interests of transparency, the proposal will also not permit Consultation Alternative Amendments to be subject to the confidentiality provisions within CUSC.</p>	
Impact on the CUSC (this should be given where possible):	
<p>Paragraph 8.20.2 (e) of the CUSC would require amendment to give effect to the change proposed. Two new definitions would also be required in section 11 and amendment of one existing definition. Consequential changes to sections 8.17, 8.19 and 8.23 will be needed to reflect the newly defined terms.</p> <p>The draft text to give effect to this proposal is contained in Annex 1.</p>	
Impact on Core Industry Documentation (this should be given where possible):	
None.	
Impact on Computer Systems and Processes used by CUSC Parties (this should be given where possible):	
None.	

Details of any Related Modifications to Other Industry Codes (where known):

None.

Justification for Proposed Amendment with Reference to Applicable CUSC Objectives**

(mandatory by proposer):

The terms of the Transmission Licence require National Grid to establish and operate procedures for the modification of the CUSC, including the modification procedures themselves, so as to better facilitate achievement of the Applicable CUSC Objectives.

Amendment of the definition of "Alternative Amendment" would improve clarity and remove uncertainty from the CUSC documentation and hence enable National Grid to more easily and efficiently discharge it's obligations under the Act and the Transmission Licence and fulfil it's obligations to facilitate competition in the generation and supply of electricity. In addition there would be greater transparency and scope for the industry to comment on alternative amendments submitted during the consultation phase.

Details of Proposer: Organisation's Name:	The National Grid Company plc
Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or "energywatch")	CUSC Party
Details of Proposer's Representative: Name: Organisation: Telephone Number: Email Address:	Andy Balkwill The National Grid Company plc 024 7642 3198 andy.balkwill@uk.ngrid.com
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Richard Dunn The National Grid Company plc 024 7642 3053 richard.dunn@uk.ngrid.com
Attachments (Yes/No):	Yes
If Yes, Title and No. of pages of each Attachment:	Attachment 1 – Draft Text to give effect to proposal. six Pages.

Notes:

- Those wishing to propose an Amendment to the CUSC should do so by filling in this "Amendment Proposal Form" that is based on the provisions contained in Section 8.15 of the CUSC. The form seeks to ascertain details about the Amendment Proposal so that the Amendments Panel can determine more clearly whether the proposal should be considered by a Working Group or go straight to wider National Grid Consultation.
- The Panel Secretary will check that the form has been completed, in accordance with the requirements of the CUSC, prior to submitting it to the Panel. If the Panel Secretary accepts the Amendment Proposal form as complete, then he will write back to the Proposer informing him of the reference number for the Amendment Proposal and the date on which the Proposal will be considered by the Panel. If, in the opinion of the Panel Secretary, the form fails to provide the information required in the CUSC, then he may reject the Proposal. The Panel Secretary will inform the Proposer of the rejection and report the matter to the Panel at

their next meeting. The Panel can reverse the Panel Secretary's decision and if this happens the Panel Secretary will inform the Proposer.

The completed form should be returned to:

Richard Dunn
Panel Secretary
Commercial Development
National Grid Company plc
National Grid House
Kirby Corner Road
Coventry, CV4 8JY

Or via e-mail to: CUSC.Team@uk.ngrid.com

(Participants submitting this form by email will need to send a statement to the effect that the proposer acknowledges that on acceptance of the proposal for consideration by the Amendments Panel, a proposer which is not a CUSC Party shall grant a licence in accordance with Paragraph 8.15.7 of the CUSC. A Proposer that is a CUSC Party shall be deemed to have granted this Licence).

3. Applicable CUSC Objectives** - These are defined within the National Grid Company Transmission Licence under Section C7F, paragraph 15. Reference should be made to this section when considering a proposed amendment.

Annex 2 – Proposed Text to modify CUSC

Part A - Text to give effect to the Proposed Amendment

Change Marked Version

8.17. WORKING GROUPS

8.17.1 If the **Amendments Panel** has decided not to proceed directly to wider consultation by **NGC**, a **Working Group** will be established, or an existing **Standing Group** identified and actioned, by the **Amendments Panel** to assist the **Amendments Panel** in evaluating whether an **Amendment Proposal** better facilitates achieving the **Applicable CUSC Objectives** and whether a **Working Group Alternative Amendment** would, as compared with the **Amendment Proposal**, better facilitate achieving the **Applicable CUSC Objectives** in relation to the issue or defect identified in the **Amendment Proposal**. Where a **Standing Group** is identified and actioned in relation to an **Amendment Proposal**, a reference to **Working Group** in this Section 8 shall, in relation to that **Amendment Proposal**, be deemed to be a reference to that **Standing Group** acting in that capacity. Unless specifically appointed pursuant to this Paragraph or permitted pursuant to Paragraph 8.19, a **Standing Group** shall not comment upon any **Amendment Proposal**.

8.17.8 The terms of reference of a **Working Group** must include provision in respect of the following matters:

- (a) those areas of a **Working Group's** powers or activities which require the prior approval of the **Amendments Panel**;
- (b) the seeking of instructions, clarification or guidance from the **Amendments Panel**; and
- (c) (the timetable for the work to be done by the **Working Group**, in accordance with the timetable established pursuant to Paragraph 8.16.4.

In addition, prior to the taking of any steps which would result in the undertaking of a significant amount of work (including the production of draft legal text to modify the **CUSC** in order to give effect to a **Proposed Amendment** and/or **Working Group Alternative Amendment**, with the relevant terms of reference setting out what a significant amount of work would be in any given case), the **Working Group** shall seek the views of the **Amendment Panel** as to whether to proceed with such steps and, in giving its views, the **Amendment Panel** may consult the **Authority** in respect thereof.

8.19 CONSULTATION

8.19.1 After consideration of any **Working Group** report on the **Amendment**

Proposal and if applicable any Working Group Alternative Amendment by the **Amendments Panel** and a determination by the **Amendments Panel** to proceed to wider consultation by **NGC**, **NGC** shall consult on the **Amendment Proposal and if applicable any Working Group Alternative Amendment** with:

- (i) **CUSC Parties**; and
- (ii) such other persons who may properly be considered to have an appropriate interest in it.

Where following the establishment of a **Working Group**, or the decision of the **Amendments Panel** to proceed directly to consultation by **NGC**, in relation to an **Amendment Proposal**, the terms of reference of a **Standing Group** have been amended by the **Amendments Panel** to include the ability to comment on that **Amendment Proposal**, that **Standing Group** as a body shall be deemed to fall within sub-paragraph (ii) above and therefore shall be able to respond to **NGC's** consultation. It shall not, however, in so doing undertake the functions of a **Working Group**. In the absence of such a change in terms of reference, the **Standing Group** as a body shall have no ability to respond to any consultation.

8.19.3 The Consultation Paper will contain the proposed drafting for the Amendment Proposal and any Working Group Alternative Amendment (unless the **Authority** decides none is needed in the **Amendment Report** under Paragraph 8.19.4) and will indicate the issues which arose in the **Working Group** discussions, where there has been a Working Group and will incorporate **NGC's** and the **Amendments Panel's** initial views on the way forward.

8.19.4 Where **NGC** is proposing to recommend to the **Authority** that a **Proposed Amendment** or **Working Group Alternative Amendment** should not be made, **NGC** shall consult with the **Authority** as to whether the **Authority** would like the **Amendment Report** to include the proposed text to amend the **CUSC**. If it does not, no text needs to be included. If it does, and no detailed text has yet been prepared, **NGC** shall prepare such text to modify the **CUSC** in order to give effect to such **Proposed Amendment** or **Working Group Alternative Amendment** and shall seek the views of the relevant **Working Group** on this text.

8.19.6 If a CUSC Party proposes a Consultation Alternative Amendment NGC shall as soon as practicable consult on the basis of Paragraph 8.19.2 with the parties identified in Paragraph 8.19.1 as to whether this Consultation Alternative Amendment better facilitates achievement of the CUSC Objectives than the Proposed Amendment and any Working Group Alternative Amendment. The position on legal drafting of the text shall be the same as that set out in Paragraphs 8.19.3 and 8.19.4. A CUSC Party may not propose a Consultation Alternative Amendment following the start of the further period of consultation described in this Paragraph 8.19.6. A Consultation Alternative Amendment shall not be subject to the confidentiality provisions described in Paragraph 8.22.1.

8.20 AMENDMENT REPORT

- 8.20.2** The matters to be included in an **Amendment Report** shall be the following (in respect of the **Amendment Proposal**):
- (a) the **Proposed Amendment** and any **Working Group Alternative Amendment** or **Consultation Alternative Amendment**;
 - (b) the recommendation of **NGC** as to whether or not the Proposed Amendment (or any **Alternative Amendment** as provided below) should be made;
 - (c) a summary (agreed by the **Amendments Panel**) of the views (including any recommendations) from **Panel Members** and/or the **Working Group** as the case may be made during the consultations in respect of the **Proposed Amendment** and of any **Alternative Amendment**;
 - (d) an analysis of whether (and, if so, to what extent) the **Proposed Amendment** would better facilitate achievement of the **Applicable CUSC Objective(s)**;
 - ~~(e)~~ an analysis of whether (and, if so, to what extent) the **Working Group Alternative Amendment** would better facilitate achievement of the **Applicable CUSC Objective(s)** as compared with the **Proposed Amendment** and any **Consultation Alternative Amendment** and the current version of the **CUSC**;
 - ~~(f)(e)~~ a full description and analysis of whether (and if so to what extent) any **Consultation Alternative proposed Amendment** developed during the consultation ("**Alternative Amendment**") which as compared with the **Proposed Amendment** and any **Working Group Alternative Amendment**, and the current version of the **CUSC** may **would** better facilitate achievement of the **Applicable CUSC Objective(s)** and the views and rationale in respect thereof;
 - ~~(h)(g)~~ the proposed date for the implementation of the **Proposed Amendment** or any **Alternative Amendment**;
 - ~~(g)(h)~~ an assessment of:
 - (i) the impact of the **Proposed Amendment** and any **Alternative Amendment** on the **Core Industry Documents**;
 - (ii) the changes which would be required to the **Core Industry Documents** in order to give effect to the **Proposed Amendment** and any **Alternative Amendment**;
 - (iii) the mechanism and likely timescale for the making of the changes referred to in Paragraph (ii);
 - (iv) the changes and/or developments which would be required to central computer systems and, if practicable, processes used in connection with the

operation of arrangements established under the **Core Industry Documents**;

- (v) the mechanism and likely timescale for the making of the changes referred to in Paragraph (iv);
- (vi) an estimate of the costs associated with making and delivering the changes referred to in Paragraphs (ii) and (iv), such costs are expected to relate to: for (ii) the costs of amending the **Core Industry Document(s)** and for (iv) the costs of changes to computer systems and possibly processes which are established for the operation of the **Core Industry Documents**.

together with a summary of representations in relation to such matters;

- ~~(h)~~(i) to the extent such information is available to **NGC**, an assessment of the impact of the **Proposed Amendment** and any **Alternative Amendment** on **CUSC Parties** in general (or classes of **CUSC Parties** in general), including the changes which are likely to be required to their internal systems and processes and an estimate of the development, capital and operating costs associated with implementing the changes to the **CUSC** and to **Core Industry Documents**;
- ~~(h)~~(j) copies of (and a summary of) all written representations or objections made by consultees during the consultations in respect of the **Proposed Amendment** and any **Alternative Amendment** and subsequently maintained;
- ~~(h)~~(k) a copy of any impact assessment prepared by **Core Industry Document Owners** and the views and comments of **NGC** in respect thereof.

- 8.20.5** In accordance with the **Transmission Licence**, the **Authority** may approve the **Proposed Amendment** or an **Alternative Amendment** contained in the **Amendment Report** (which shall then be an "**Approved Amendment**" until implemented). If the **Authority** believes that neither the **Proposed Amendment** (nor any **Alternative Amendment**, if any) would ~~not~~ better facilitate achievement of the **Applicable CUSC Objectives**, then there will be no approval. In such a case, **NGC** will notify **CUSC Parties** and will raise the issue at the next **Amendments Panel** meeting.

SECTION 11 - INTERPRETATION AND DEFINITIONS

" **Alternative Amendment**"

As defined in Paragraph 8.20.2 means collectively any **Working Group Alternative Amendment** or **Consultation Alternative Amendment**.

"Working Group Alternative Amendment"

an alternative amendment to the **Amendment Proposal** developed by the **Working Group** under the **Working Group** terms of reference and which is believed by a member or members of the Working Group to better facilitate the **Applicable CUSC Objectives** than the **Amendment Proposal** or the current version of the **CUSC** ;

"Consultation Alternative Amendment"

any alternative expressly proposed as such (which contains the information required by Paragraph 8.15.2 and sufficient detail to enable consideration of the alternative) by a **CUSC Party** in response to **NGC's** consultation on any **Amendment Proposal** and any **Working Group Alternative Amendment** which the **CUSC Party** believes better facilitates the **Applicable CUSC Objectives** than the **Amendment Proposal** or **Working Group Alternative Amendment** or the current version of the **CUSC** ;

Part B - Text to give effect to Alternative Amendment A**Change Marked Version**

- 8.16.4 (d)** In setting such a timetable, the **Amendments Panel** and **NGC** shall exercise their respective discretions such that, in respect of each **Amendment Proposal**, an **Amendment Report** may be submitted to the **Authority** as soon after the **Amendment Proposal** is made as is consistent with the proper evaluation of such **Amendment Proposal**, and any **Alternative Amendment Proposal(s)** taking due account of its complexity, importance and urgency.
- 8.16.4 (e)** Without prejudice to Paragraph (d) above, the timetable under (b) above shall be set such that it is no longer than three months, that under (c) above such that it is no longer than two months for the consultation and another 14 days for the preparation of the **Amendment Report**, unless in any case the particular circumstances of the **Amendment Proposal** and any **Alternative Amendment Proposal(s)** (taking due account of its complexity, importance and urgency) justify an extension of such timetable, and provided the **Authority** does not object, taking into account all those issues.
- 8.17.1** If the **Amendments Panel** has decided not to proceed directly to wider consultation by **NGC**, a **Working Group** will be established, or an existing **Standing Group** identified and actioned, by the **Amendments Panel** to assist the **Amendments Panel** in evaluating whether ~~an~~ the **Amendment Proposal** better facilitates achieving the **Applicable CUSC Objectives** and/or whether any **Alternative Amendment(s)** would, as compared with the **Amendment Proposal**, better facilitate achieving the **Applicable CUSC Objectives** in relation

to the issue or defect identified in the **Amendment Proposal**. Where a **Standing Group** is identified and actioned in relation to an **Amendment Proposal**, a reference to **Working Group** in this Section 8 shall, in relation to that **Amendment Proposal**, be deemed to be a reference to that **Standing Group** acting in that capacity. Unless specifically appointed pursuant to this Paragraph or permitted pursuant to Paragraph 8.19, a **Standing Group** shall not comment upon any **Amendment Proposal**.

8.17.8 The terms of reference of a **Working Group** must include provision in respect of the following matters:

- (a) those areas of a **Working Group's** powers or activities which require the prior approval of the **Amendments Panel**;
- (b) the seeking of instructions, clarification or guidance from the **Amendments Panel**; and
- (c) the timetable for the work to be done by the **Working Group**, in accordance with the timetable established pursuant to Paragraph 8.16.4.

In addition, and taking into account the provisions of Paragraphs 8.19.5 prior to the taking of any steps which would result in the undertaking of a significant amount of work (including the production of draft legal text to modify the **CUSC** in order to give effect to a **Proposed Amendment** and/or any Alternative Amendment developed either by the Working Group or during wider consultation, with the relevant terms of reference setting out what a significant amount of work would be in any given case), the **Working Group** shall seek the views of the **Amendment Panel** as to whether to proceed with such steps and, in giving its views, the **Amendment Panel** may consult the **Authority** in respect thereof.

8.19.1 After consideration of any **Working Group** report on the **Amendment Proposal** and any Alternative Amendment developed by the Working Group by the **Amendments Panel** and a determination by the **Amendments Panel** to proceed to wider consultation by **NGC**, **NGC** shall consult on the **Amendment Proposal** and any Alternative Amendment with:

- (i) **CUSC Parties**; and
- (ii) such other persons who may properly be considered to have an appropriate interest in it.

Where following the establishment of a **Working Group**, or the decision of the **Amendments Panel** to proceed directly to consultation by **NGC**, in relation to an **Amendment Proposal**, the terms of reference of a **Standing Group** have been amended by the **Amendments Panel** to include the ability to comment on that **Amendment Proposal**, that **Standing Group** as a body shall be deemed to fall within sub-paragraph (ii) above and therefore shall be able to respond to **NGC's** consultation. It shall not, however, in so doing undertake the functions of a **Working Group**. In the absence of

such a change in terms of reference, the **Standing Group** as a body shall have no ability to respond to any consultation.

8.19.4 Subject to the provisions of this section 8.19 if during the consultation a **CUSC Party** proposes an **Alternative Amendment(s)** NGC shall as soon as practicable issue a further consultation on the basis of Paragraphs 8.19.1 and 8.19.2 solely to determine whether this **Alternative Amendment(s)** better facilitates achievement of the applicable **CUSC Objectives** than the **Proposed Amendment** and any other **Alternative Amendment**. Any **Alternative Amendment** provided in response to a consultation shall not be subject to the confidentiality provisions described in Paragraph 8.22.1. During a period of further consultation a **CUSC Party** may not provide any further **Alternative Amendment**.

8.19.5 4 Where **NGC** is proposing to recommend to the **Authority** that a **Proposed Amendment** or **Alternative Amendment** should not be made, **NGC** shall consult with the **Authority** as to whether the **Authority** would like the **Amendment Report** to include the proposed text to amend the **CUSC**. If it does not, no text needs to be included. If it does, and no detailed text has yet been prepared, **NGC** shall prepare such text to modify the **CUSC** in order to give effect to such **Proposed Amendment** or **Alternative Amendment** and shall seek the views of the relevant **Working Group**.

8.20.2 The matters to be included in an **Amendment Report** shall be the following (in respect of the **Amendment Proposal**):

- (a) the **Proposed Amendment** and any **Alternative Amendment(s)**;
- (b) the recommendation of **NGC** as to whether or not the **Proposed Amendment** (or any **Alternative Amendment** as provided below) should be made;
- (c) a summary (agreed by the **Amendments Panel**) of the views (including any recommendations) from **Panel Members** and/or the **Working Group** as the case may be made during the consultation in respect of the **Proposed Amendment** and of any **Alternative Amendment**;
- (d) an analysis of whether (and, if so, to what extent) the **Proposed Amendment** would better facilitate achievement of the **Applicable CUSC Objective(s)**;
- (e) a full description and analysis of any alternative proposed amendment developed by a **Working Group** or during the consultation ("**Alternative Amendment**") which, as compared with the **Proposed Amendment**, may better facilitate achievement of the **Applicable CUSC Objective(s)** and the views and rationale in respect thereof;
- (f) the proposed date for the implementation of the **Proposed Amendment** or any **Alternative Amendment**;
- (g) an assessment of:

- (i) the impact of the **Proposed Amendment** and any **Alternative Amendment** on the **Core Industry Documents**;
 - (ii) the changes which would be required to the **Core Industry Documents** in order to give effect to the **Proposed Amendment** and any **Alternative Amendment**;
 - (iii) the mechanism and likely timescale for the making of the changes referred to in Paragraph (ii);
 - (iv) the changes and/or developments which would be required to central computer systems and, if practicable, processes used in connection with the operation of arrangements established under the **Core Industry Documents**;
 - (v) the mechanism and likely timescale for the making of the changes referred to in Paragraph (iv);
 - (vi) an estimate of the costs associated with making and delivering the changes referred to in Paragraphs (ii) and (iv), such costs are expected to relate to: for (ii) the costs of amending the **Core Industry Document(s)** and for (iv) the costs of changes to computer systems and possibly processes which are established for the operation of the **Core Industry Documents**.
- together with a summary of representations in relation to such matters;
- (h) to the extent such information is available to **NGC**, an assessment of the impact of the **Proposed Amendment** and any **Alternative Amendment** on **CUSC Parties** in general (or classes of **CUSC Parties** in general), including the changes which are likely to be required to their internal systems and processes and an estimate of the development, capital and operating costs associated with implementing the changes to the **CUSC** and to **Core Industry Documents**;
 - i) copies of (and a summary of) all written representations or objections made by consultees during the consultation in respect of the **Proposed Amendment** and any **Alternative Amendment** and subsequently maintained;
 - (j) a copy of any impact assessment prepared by **Core Industry Document Owners** and the views and comments of **NGC** in respect thereof.

8.20.5

In accordance with the **Transmission Licence**, the **Authority** may approve the **Proposed Amendment** or an **Alternative Amendment** contained in the **Amendment Report** (which shall then be an "**Approved Amendment**" until implemented). If the **Authority** believes that **neither** the **Proposed Amendment** (**n**or any **Alternative Amendment**, **if any** would **not** better facilitate achievement of the **Applicable CUSC Objectives**, then there will be no approval. In such

a case, **NGC** will notify **CUSC Parties** and will raise the issue at the next **Amendments Panel** meeting.

Annex 3 – Copies of Representations Received to Consultation

This Annex includes copies of any representations received following circulation of the Consultation Document (circulated on 7th August, requesting comments by close of business on Friday 12th September).

Representations were received from the following parties:

No.	Company	File Number
1	Powergen UK plc	CAP049-CR-01
2	EDF Energy	CAP049-CR-02
3	British Energy	CAP049-CR-03
4	British Gas	CAP049-CR-04

Reference	CAP049-CR-01
Company	Powergen UK plc



Neil Smith
Trading Arrangements

Richard Dunn
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

22/08/2003

Reference

Dear Richard

Reference: Consultation Response for CAP049

Powergen is in favour of the amendment proposal CAP049, and welcome the opportunity to contribute to this consultation.

This amendment seeks to enable National Grid to more easily and efficiently discharge its obligations to facilitate competition in the generation and supply of electricity. It is the considered view of Powergen that CAP049 does better facilitate the achievement of this applicable objective.

Should the proposal be accepted, it is likely that the amendment will introduce several benefits. Firstly, the proposed amendments would increase the clarity of the current arrangements. In turn, this will allow National Grid to efficiently discharge its obligations. Secondly, this change would undoubtedly increase transparency, which could only serve to increase confidence in the process. Finally, CAP049 would provide greater scope for industry consultation on alternative amendments, whilst safeguarding efficiency by not prolonging such discussions beyond the initial consultation phase.

Yours Sincerely

Neil Smith
Regulatory Analyst
Powergen

Reference	CAP049-CR-02
Company	EDF Energy

**Our Ref
Your**

Richard Dunn
Commercial Frameworks
National Grid Transco House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

Date 4th September 2003

Dear Richard,

**EDF Energy Response to CUSC Amendment Proposal CAP049 –
“Alternative Amendments”**

Thank you for giving EDF Energy the opportunity to respond to this CUSC Amendment Proposal 049 “Alternative Amendments”.

EDF Energy supports the implementation of the proposal. We believe that amendment of the definition of Alternative Amendments, such that that they may be developed by a working group as well as being put forward at the industry consultation stage, would improve the clarity of the amendment process.

EDF Energy also supports the proposed additional industry consultation on any Alternative Amendments that are raised. At present Ofgem does not have the benefit of hearing industry views on Alternative Amendments and therefore are making decisions based only on the responses from the initial proposal and consultation. An Alternative Amendment could contain significant changes from the original, therefore by allowing a wider industry consultation on any Alternative Amendments gives an opportunity for any concerns to be raised and will enable Ofgem to make a better informed decision.

In summary, EDF Energy believe that this proposal allows for greater clarity, certainty and transparency that leads to an improvement in the overall Amendment process and would therefore better meet the CUSC objectives of facilitating competition and the efficient discharge by National Grid of its transmission licence obligations. We hope our comments have been useful in helping Ofgem assess the merits of this proposal but please contact me if you would like to discuss further.

Regards

Russell Hill
Regulation and Market Infrastructure
EDF Energy

Reference	CAP049-CR-03
Company	British Energy



12^h September 2003

Richard Dunn
Commercial Frameworks
National Grid Transco House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

Dear Richard,

CUSC Consultation Document CAP049:
Alternative Amendments

Thank you for the opportunity to participate in this consultation process.

In consideration of the above CAP, we would advise that we whilst we support the principle of the proposed amendment, we have provided an Alternative Amendment for consideration. We believe this alternative better facilitates achievement of the applicable CUSC Objective C7F1(a)¹, of both the existing CUSC and the original CAP049 Amendment Proposal.

In addition, in relation to the current suite of Amendment Proposals, (CAPs 49/50/51) we would express some concern with the amendment process followed on this occasion.

Despite the well-meant intent of the Panel for the Working Group to function by email etc. in the interests of efficiency, it has become apparent that this method provided neither sufficient nor effective discussion of the issues and the Amendment Report reflects the overall lack of involvement of Working Group (WG) members. If the lack of engagement is considered a valid criticism, a learning point here may be that WG members undertaking their roles via non-physical meetings be asked whether and to what extent they will or are able to contribute, as a positive means of ensuring and determining

¹ LC C7F1(a) relates to the efficient discharge of the transmission licensee of the obligations imposed upon it under the Electricity Act 1989 and the transmission licence

active participation. For example, there is a concern for example that silence is taken as an assenting opinion.

Whilst this set of governance Amendment Proposals may be considered of minor importance, in order to maintain the credibility of the review, assessment of proposals and the development or otherwise of alternatives, the process is all important. We therefore suggest that the circumstances surrounding the functionality of the Working Group on this occasion be reviewed and findings presented to the Panel for consideration.

In relation to the specific Amendment Proposal CAP049, appended below is an Alternative Amendment which we believe addresses the identified defect in a simpler and more efficient manner and furthermore removes the requirement for the identification and differentiation of two classes of Alternative Amendments as proposed in the Amendment Proposal.

We are not fully convinced with the Proposer's assertion that CUSC 8.20.2 (e) implies that an Alternative Amendment may only be developed during the consultation stage and not raised or developed by a Working Group. However, we do accept that additional clarity would remove the potential ambiguity.

We also recognise the concerns that Alternative Amendments which are raised during a consultation stage have generally not been made available to the wider industry for consideration due to the current process timings. However, NGT acknowledge in the consultation report section 4.3 that there is sufficient flexibility within the overall 2 month maximum consultation period for a further consultation round should this prove appropriate. We would endorse the judicious setting of consultation periods by the Amendments Panel and NGC as per CUSC 8.16.4. to facilitate this.

The issue of multiple 'Alternatives' (which have only been generated on a few CAPs to date during the consultation period) leads us to a wider and more generic process issue. In order to minimise the frequency with which these multiples occur requires the Panel and NGC to correctly identify, so far as is reasonably practicable, whether the Amendment Proposal should initially be referred for a period to a Working Group etc to highlight the merits and issues, including the potential for multiple solutions and implementation issues, at an early a stage as possible and before wider industry consultation. We believe that it has been shown to be a false economy in terms of both time and industry effort for CAPs (other than 'housekeeping' amendments) not to have been through a review before wider industry consideration. Performing such a review, similar to the BSC process, could be achieved by the Panel, under CUSC 8.17.7, initially setting a limited scope and timeframe for a WG/SG to consider and inform the Panel whether a fuller WG/SG review should be undertaken (i.e. when there is a high potential for one or more alternative solutions to be identified to resolve the defect identified) before wider industry circulation. Such a process should significantly reduce the risk of a plethora of Alternative Amendments being generated during the consultation phase.

On the basis of the above process outlined, which we believe can be readily accommodated within the administrative procedures and timescales of the

current amendment process, we do not believe there is any requirement to differentiate between Working Group and Consultation 'alternatives' as proposed.

In summary, we believe that subject to the minor amendments to the CUSC identified in the Alternative Amendment below, and with further consideration by the Panel and NGC of the amendment procedures in the light of our observations above, the necessary resolution to the Alternative Amendment issue posed by this CAP can be achieved more efficiently than the original CAP and hence better facilitate achievement of the Applicable CUSC Objectives compared with the existing CUSC and the original Amendment Proposal.

It should be noted that the text provided for the proposed Alternative Amendment is illustrative only and would request that NGC review to ensure appropriate legal text is available for the Authority. In this regard, we would note that current provisions of section 8.19 only appear to facilitate the provision or otherwise of legal text for an Alternative Amendment which NGC are minded NOT to recommend to the Authority. Equivalent provisions within CUSC for Alternative Amendments which NGC may be minded to recommend should be made, cannot be found. If this conclusion is validated, this appears to be perverse. We would welcome some clarification.

If you have any queries associated with this response, please do not hesitate to contact me to discuss further

Yours faithfully,



Steve Phillips

Senior Trading Consultant
Market Development
Power & Energy Trading

Alternative Amendment for CAP049:

8.16.4 (d)

In setting such a timetable, the **Amendments Panel** and **NGC** shall exercise their respective discretions such that, in respect of each **Amendment Proposal**, an **Amendment Report** may be submitted to the **Authority** as soon after the **Amendment Proposal** is made as is consistent with the proper evaluation of such **Amendment Proposal**, and any **Alternative**

Amendment Proposal(s) taking due account of its complexity, importance and urgency.

8.16.4 (e)

Without prejudice to Paragraph (d) above, the timetable under (b) above shall be set such that it is no longer than three months, that under (c) above such that it is no longer than two months for the consultation and another 14 days for the preparation of the **Amendment Report**, unless in any case the particular circumstances of the **Amendment Proposal** and any **Alternative Amendment Proposal(s)** (taking due account of its complexity, importance and urgency) justify an extension of such timetable, and provided the **Authority** does not object, taking into account all those issues.

8.17.1

If the **Amendments Panel** has decided not to proceed directly to wider consultation by **NGC**, a **Working Group** will be established, or an existing **Standing Group** identified and actioned, by the **Amendments Panel** to assist the **Amendments Panel** in evaluating whether ~~an~~ the **Amendment Proposal** better facilitates achieving the **Applicable CUSC Objectives** and/or whether any **Alternative Amendment(s)** would, as compared with the **Amendment Proposal**, better facilitate achieving the **Applicable CUSC Objectives** in relation to the issue or defect identified in the **Amendment Proposal**. Where a **Standing Group** is identified and actioned in relation to an **Amendment Proposal**, a reference to **Working Group** in this Section 8 shall, in relation to that **Amendment Proposal**, be deemed to be a reference to that **Standing Group** acting in that capacity. Unless specifically appointed pursuant to this Paragraph or permitted pursuant to Paragraph 8.19, a **Standing Group** shall not comment upon any **Amendment Proposal**.

8.17.8

The terms of reference of a **Working Group** must include provision in respect of the following matters:

- (a) those areas of a **Working Group's** powers or activities which require the prior approval of the **Amendments Panel**;
- (b) the seeking of instructions, clarification or guidance from the **Amendments Panel**; and
- (c) the timetable for the work to be done by the **Working Group**, in accordance with the timetable established pursuant to Paragraph 8.16.4.

In addition, and taking into account the provisions of Paragraphs 8.19.5 prior to the taking of any steps which would result in the undertaking of a significant amount of work (including the production of draft legal text to modify the **CUSC** in order to give effect to a **Proposed Amendment** and/or any Alternative Amendment developed either by the Working Group or during wider consultation–, with the relevant terms of reference setting out

what a significant amount of work would be in any given case), the **Working Group** shall seek the views of the **Amendment Panel** as to whether to proceed with such steps and, in giving its views, the **Amendment Panel** may consult the **Authority** in respect thereof.

8.19.1

After consideration of any **Working Group** report on the **Amendment Proposal** and any **Alternative Amendment** developed by the **Working Group** by the **Amendments Panel** and a determination by the **Amendments Panel** to proceed to wider consultation by **NGC**, **NGC** shall consult on the **Amendment Proposal** and any **Alternative Amendment** with:

- (i) **CUSC Parties**; and
- (ii) such other persons who may properly be considered to have an appropriate interest in it.

Where following the establishment of a **Working Group**, or the decision of the **Amendments Panel** to proceed directly to consultation by **NGC**, in relation to an **Amendment Proposal**, the terms of reference of a **Standing Group** have been amended by the **Amendments Panel** to include the ability to comment on that **Amendment Proposal**, that **Standing Group** as a body shall be deemed to fall within sub-paragraph (ii) above and therefore shall be able to respond to **NGC's** consultation. It shall not, however, in so doing undertake the functions of a **Working Group**. In the absence of such a change in terms of reference, the **Standing Group** as a body shall have no ability to respond to any consultation.

8.19.4

Subject to the provisions of this section 8.19 f during the consultation a **CUSC Party** proposes an **Alternative Amendment(s)** **NGC** shall as soon as practicable issue a further consultation on the basis of Paragraphs 8.19.1 and 8.19.2 solely to determine whether this **Alternative Amendment(s)** better facilitates achievement of the applicable **CUSC Objectives** than the **Proposed Amendment** and any other **Alternative Amendment**. Any **Alternative Amendment** provided in response to a consultation shall not be subject to the confidentiality provisions described in Paragraph 8.22.1. During a period of further consultation a **CUSC Party** may not provide any further **Alternative Amendment**

8.19.5

Where **NGC** is proposing to recommend to the **Authority** that a **Proposed Amendment** or **Alternative Amendment** should not be made, **NGC** shall consult with the **Authority** as to whether the **Authority** would like the **Amendment Report** to include the proposed text to amend the **CUSC**. If it does not, no text needs to be included. If it does, and no detailed text has yet been prepared, **NGC** shall prepare such text to modify the **CUSC** in order to

give effect to such **Proposed Amendment** or **Alternative Amendment** and shall seek the views of the relevant **Working Group**.

8.20.2

The matters to be included in an **Amendment Report** shall be the following (in respect of the **Amendment Proposal**):

- (a) the **Proposed Amendment** and any **Alternative Amendment(s)**;
- (b) the recommendation of **NGC** as to whether or not the **Proposed Amendment** (or any **Alternative Amendment** as provided below) should be made;
- (c) a summary (agreed by the **Amendments Panel**) of the views (including any recommendations) from **Panel Members** and/or the **Working Group** as the case may be made during the consultation in respect of the **Proposed Amendment** and of any **Alternative Amendment**;
- (d) an analysis of whether (and, if so, to what extent) the **Proposed Amendment** would better facilitate achievement of the **Applicable CUSC Objective(s)**;
- (e) a full description and analysis of any alternative proposed amendment developed by a **Working Group** or during the consultation ("**Alternative Amendment**") which, as compared with the **Proposed Amendment**, may better facilitate achievement of the **Applicable CUSC Objective(s)** and the views and rationale in respect thereof;
- (f) the proposed date for the implementation of the **Proposed Amendment** or any **Alternative Amendment**;
- (g) an assessment of:
 - (i) the impact of the **Proposed Amendment** and any **Alternative Amendment** on the **Core Industry Documents**;
 - (ii) the changes which would be required to the **Core Industry Documents** in order to give effect to the **Proposed Amendment** and any **Alternative Amendment**;
 - (iii) the mechanism and likely timescale for the making of the changes referred to in Paragraph (ii);
 - (iv) the changes and/or developments which would be required to central computer systems and, if practicable, processes used in connection with the operation of arrangements established under the **Core Industry Documents**;
 - (v) the mechanism and likely timescale for the making of the changes referred to in Paragraph (iv);
 - (vi) an estimate of the costs associated with making and delivering the changes referred to in Paragraphs (ii) and (iv), such costs are expected to relate to: for (ii) the costs of amending the **Core Industry Document(s)** and for (iv) the costs of changes to computer systems and possibly processes which are established for the operation of the **Core Industry Documents**. together with a summary of representations in relation to such matters;
- (h) to the extent such information is available to **NGC**, an assessment of the impact of the **Proposed Amendment** and any **Alternative Amendment** on **CUSC Parties** in general (or classes of **CUSC Parties** in general), including the changes which are likely to be required to their internal systems and processes and an estimate of the

development, capital and operating costs associated with implementing the changes to the **CUSC** and to **Core Industry Documents**;

(i) copies of (and a summary of) all written representations or objections made by consultees during the consultation in respect of the **Proposed Amendment** and any **Alternative Amendment** and subsequently maintained;

(j) a copy of any impact assessment prepared by **Core Industry Document Owners** and the views and comments of **NGC** in respect thereof.

8.20.5

In accordance with the **Transmission Licence**, the **Authority** may approve the **Proposed Amendment** or an **Alternative Amendment** contained in the **Amendment Report** (which shall then be an "**Approved Amendment**" until implemented). If the **Authority** believes that **neither** the **Proposed Amendment** (nor any **Alternative Amendment**, ~~if any~~) would ~~not~~ better facilitate achievement of the **Applicable CUSC Objectives**, then there will be no approval. In such a case, **NGC** will notify **CUSC Parties** and will raise the issue at the next **Amendments Panel** meeting.

Reference	CAP049-CR-04
Company	British Gas



National Grid
National Grid Transco House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

For the Attention of Richard Dunn
– Commercial Frameworks

Energy management group

Charter Court
50 Windsor Road
Slough
Berkshire
SL1 2HA

Tel. (01753) 758051
Fax (01753) 758368

Our Ref
Your Ref.

25 September 2003

Dear Richard,

Re: CAP049 – Alternative Amendments

Thank you for the opportunity to comment on this Amendment Proposal (AP). British Gas (BGT) agrees that there is a flaw with the current CUSC wording in this area, and therefore supports the principle behind the AP. However, BGT do not accept that the current legal drafting achieves the desired result.

BGT submitted an initial set of comments in respect of the legal drafting provided with the original proposal, most of which have been included in the revised text accompanying this Consultation. However, no explanation has been given as to the reasons behind the decision not to include certain of our comments. We would welcome some feedback on this.

In carrying out a further review of the proposed drafting included in the Consultation Document we believe the following changes should also be made:

- a) 8.17.8 – In Para 4, line 7, we believe “Amendment Panel” should be emboldened.
- b) 8.19.1 – line 5, add “if applicable” in front of “any **Working Group ...**”
- c) 8.20.2(a) – add “or **Consultation Alternative Amendment**” after “and any **Working Group Alternative Amendment**”.
- d) 8.20.2(e&f) – clarify whether Alternative Amendments not only have to better facilitate achievement of the **Applicable CUSC Objective(s)** as compared to the original **Proposed Amendment** but also the current CUSC. (NB. This would also impact the Definitions).
- e) Section 11 – in definition of “**Alternative Amendment**” add “**Alternative**” after “**Consultation**”.

- f) Section 11 – in definition of “**Consultation Alternative Amendment**”, in line 6, delete “or” and replace with “and any”.

If necessary these changes should be considered as a formal Alternative Amendment proposal.

BGT would also like to note our concern and disappointment with the way that the Amendment Process has operated in considering this AP. Whilst we note and accept that the Panel empowered the Working Group to operate using e-mail we do not believe that effective discussion of the issues occurred using this methodology. In particular, we believe it is against the spirit of the Panel’s instructions to take silence as assent when the only views that have been expressed were against the proposal. At the very least, dissent from the majority of those who responded suggests there is a debate to be had. For the Working Group report to be published and consulted upon without this debate inhibits the development of the AP and undermines the proper governance of CUSC. One of the principle benefits of the CUSC governance process is that it allows full and frank discussion of the issues arising from an AP that concern parties and rigorous assessment of the impact of the proposal. By failing to have this debate, we believe the Working Group has failed to meet its terms of reference.

Furthermore, we believe the Panel has failed in it’s duty to oversee good working practice of the CUSC by accepting a Working Group report that has not been adequately assessed and which the only two respondents refused to endorse. We are disappointed that the Panel has allowed this proposal to be consulted upon before all the issues have been resolved. This AP has been progressed in a manner which sets an unfortunate precedent for the development of future proposals. It may prove necessary to amend CUSC such that the flexibility and potential efficiency of meeting by email is prohibited or by explicitly stating that the working group report must reflect the views of those who make a positive response and not treating silence prove necessary to amend CUSC such that the flexibility and potential efficiency of as assent. BGT do not wish to see such changes as we believe it would be detrimental to the overall efficiency of the Code. However such changes will become necessary if the treatment received by this AP were to become the norm.

Should you wish to discuss any of our comments further, please do not hesitate to contact me.

Yours sincerely,

Simon Goldring
Transportation Manager

Annex 4 – Copies of Comments received on the Draft Amendment Report

This Annex includes copies of any representations received following circulation of the Draft Amendment Report (circulated on 17th September requesting comments by Midday on 24th September).

Representations were received from the following parties:

No.	Company	File Number
1	British Gas Trading Ltd.	CAP049-AR-01

Reference	CAP49-AR-1
Company	British Gas Trading Ltd.

From: Goldring, Simon [Simon.Goldring@centrica.co.uk]
Sent: 17 September 2003 16:02
To: Dunn, Richard
Subject: Re: CAP049

Richard,

Thank you for the opportunity to comment on the Draft Amendment Report. I only have two comments in respect of the way that my comments have been reflected in the report.

a) My comment f) in respect of the Definition of Consultation Alternative Amendment has not been included, although the report states that all comments have been included.

b) In para 1.4 of the Report NGC state that they are recommending CAP049 for implementation. It may be useful to clarify that the CAP049 that is being recommended is the revised version of the Proposal contained in the Report and not the one as originally drafted or issued for Consultation.

I trust these comments are useful.

Regards

Simon Goldring

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