



WORKING GROUP REPORT VOLUME 1

CUSC Amendment Proposal CAP184

Code Governance Review: Self-governance

**Prepared by the CAP184 Working Group
for submission to the Amendments Panel**

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Name	Organisation
The Gas and Electricity Markets Authority	Ofgem
CUSC Parties	Various
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I	DOCUMENT CONTROL	2
1.0	SUMMARY AND RECOMMENDATIONS	3
2.0	PURPOSE AND INTRODUCTION	4
3.0	PROPOSED AMENDMENT	4
4.0	SUMMARY OF WORKING GROUP DISCUSSIONS	5
5.0	WORKING GROUP ALTERNATIVE AMENDMENT	9
6.0	ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES	9
7.0	PROPOSED IMPLEMENTATION	11
8.0	IMPACT ON THE CUSC	11
9.0	IMPACT ON INDUSTRY DOCUMENTS	12
	ANNEX 1 – PROPOSED LEGAL TEXT TO MODIFY THE CUSC	14
	ANNEX 2 – WORKING GROUP TERMS OF REFERENCE AND MEMBERSHIP .	15
	ANNEX 3 – AMENDMENT PROPOSAL FORM	20
	ANNEX 4 – WORKING GROUP ATTENDANCE REGISTER	26

1.0 SUMMARY AND RECOMMENDATIONS

Executive Summary

- 1.1 CAP184 – “Code Governance Review: Self-governance” was raised by National Grid Electricity Transmission plc and submitted to a special meeting of the Amendments Panel on 9th July 2010. CAP184 is part of a series of proposals which seek to implement the final proposals of Ofgem’s Code Governance Review which were published on 31st March 2010 and which were implemented via a series of modifications to the Transmission and Distribution Licences from 5th July 2010. CAP184 seeks to implement Self-governance within the CUSC as an alternative route for implementation of Amendment Proposals. Where it is determined that an Amendment Proposal will not have a material impact in line with the criteria set out in the transmission licence, the Self-governance route would expedite the process of implementing an Amendment Proposal by not requiring the Authority to decide on that proposal, instead leaving the decision to the Panel.
- 1.2 A joint Working Group for CAPs 183, 184, 185 and 188 was established and the first meeting held on 14th July 2010. Following discussions at that meeting the Working Group held a second meeting on 21st July 2010 before proceeding to Working Group Consultation. A third Working Group meeting was held on 27th August 2010 to discuss the responses, agree any Working Group Alternative Amendments and hold the Working Group vote. A fourth meeting was held on 15th September 2010 to discuss the revised draft illustrative legal text, provided by National Grid on 8th September 2010.

Working Group Recommendation

- 1.3 The Working Group believes its Terms of Reference have been completed, CAP184 and any alternative amendments have been fully considered and recommends to the Amendments Panel unanimously, that CAP184 original proposal should be implemented. The Working Group also recommends that CAP184 should proceed to wider Industry Consultation in line with the timetable established by the Amendments Panel.

Summary of Working Group Consultation Responses

- 1.4 Seven responses were received to the Working Group Consultation, all of which supported CAP184 with no requests for a Working Group Consultation Alternative. Further detail is provided in section 12 of this report.

2.0 PURPOSE AND INTRODUCTION

- 2.1 This Report summarises the deliberations of the Working Group and describes the CAP184 Amendment Proposal.
- 2.2 CAP184 was proposed by National Grid Electricity Transmission plc and submitted to the Amendments Panel for their consideration on 9th July 2010. The Amendments Panel determined that the proposal should be considered by a Working Group and that the Working Group should report back to an additional Amendments Panel meeting in September 2010 following a three week period of Working Group Consultation.
- 2.3 The Working Group first met on 14th July 2010 and the members accepted the Terms of Reference for CAP184. A copy of the Terms of Reference is provided in Annex 2. The Working Group considered the issues raised by the Amendment Proposal and worked through the Terms of Reference, including reviewing the illustrative legal text provided. A second Working Group meeting took place by teleconference on 21st July 2010.
- 2.4 The Working Group timetable has since been updated to reflect the additional Working Group meeting held on 21st July 2010 and the consequential delays to the timetable. This is under Appendix 1 within the Working Group Terms of Reference which are contained as Annex 2 in this document.
- 2.5 This Working Group Report has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid website, www.nationalgrid.com/uk/Electricity/Codes/, along with the Amendment Proposal Form.

3.0 PROPOSED AMENDMENT

- 3.1 CAP184 seeks to implement the Self-governance aspect of the Code Governance Review final proposals and meet the new requirements under the modified electricity Transmission Licence.
- 3.2 For those Amendments which are deemed to have non material changes or impacts to the following, they may be considered to progress through the Self-governance route:
- Existing or future electricity consumers
 - Operation of the National Electricity Transmission System (NETS)
 - Security or safety of supply or sustainable development
 - Competition
 - CUSC governance or modification procedures

- 3.3 The process for CAP184 is as follows:

Initiation

A Proposer will have the opportunity to state on the Amendment Proposal form whether they believe their proposal should be considered for the Self-governance route and their reasons for this. Once the proposal goes to the Panel for consideration, for each Amendment, they will be judged against the Self-governance criteria and if the Panel believes that the Amendment Proposal should be progressed under Self-governance, a statement would be sent to the Authority outlining the reasons for the decision. This statement could also be withdrawn at any time up to when the Panel makes their final determination.

3.4 **Progression**

Once the decision has been made on Self-governance, the Panel would progress the Amendment Proposal as per the standard (CUSC) process of agreeing whether it should go to either a Working Group for consideration or straight to Company consultation. Any consultation would also include the question of whether the respondents considered that the Self-governance route was applicable. Any consultation responses would have to be sent to the Authority at least seven (7) calendar days before the Panel would make its final determination on the Amendment Proposal.

- 3.5 The CAP184 Proposal also allows for the Authority to reject the Self-governance route at any time up to the Panel's final determination, by directing the Panel to make a recommendation in line with the standard CUSC amendments process. If this were to occur then it would be the Authority that would make the final determination on the Amendment Proposal (as opposed to the Panel).

3.6 **Appeals**

Parties have up to and including fifteen (15) Business Days from the publication of the Panel's final determination on a Self-governance Amendment Proposal to submit an appeal to the Authority with regards to the final determination reached. The routes of the appeal are as follows:

Route 1: The Authority may make a decision to uphold the appeal and decide on implementation/non implementation or they may uphold the Panel's decision (on implementation/non implementation).

Route 2: The Authority may refer the decision back to the Panel for consideration whilst retaining the Self-governance route or the Authority may refer back to the Panel and veto the Self-governance decision in which case the Authority will make the final determination on the Amendment Proposal. In both cases the Panel can make the same recommendation as originally presented to the Authority.

3.7 **End**

Provided that no appeals have been made, then the Amendment Proposal would be implemented/not implemented in line with the Panel's final determination.

4.0 **SUMMARY OF WORKING GROUP DISCUSSIONS**

Presentation of Amendment Proposal

- 4.1 The first Working Group meeting was held on 14th July 2010. The National Grid Representative, as Proposer of CAP184, gave a presentation of the Amendment Proposal as described in section 3 of this document. He noted that as Ofgem's Final proposals did not specify the exact process that should be followed for Self-governance, it would be up to the Panel to make the decision on whether to progress proposals through Working Groups for example. A further point which was communicated was that the Panel, if they wished, could review their Self-governance stance on a particular Amendment Proposal at each Panel meeting to ensure that it was still appropriate to progress down this Self-governance route and also to take into account any new information that may have come to light.

- 4.2 An additional point raised by a Working Group member was in relation to the implementation date for Self-governance Amendment Proposals and it was clarified that the date should be a minimum of sixteen (16) Business Days after the Panel publishes their final determination under the Self-governance route. This is to take into account the appeals window which allows parties to raise an appeal (to the Authority) up to and including fifteen (15) Business Days after the final Panel determination and therefore, the implementation would, as a minimum, be the next Business Day after the appeals window closes.
- 4.3 During the discussions over how the Panel would progress a proposal with Self-governance in mind, a debate was held regarding consultations. A Working Group member asked whether an Amendment Proposal that was deemed to be suitable for the Self-governance route could bypass the Company consultation and go straight to a Panel recommendation. Such proposals could be insignificant in nature; such as the correction of a grammatical error within the CUSC; and it was questioned whether any responses would be received for such a consultation. Therefore the Working Group decided to seek views from the industry on this particular point.

Q1. Do you believe that under the Self-governance route, an Amendment Proposal could go straight to a Panel recommendation without conducting an industry consultation?

- 4.4 The third Working Group meeting, held on 27th August 2010, addressed this question after reviewing 7 responses from the industry. The majority opinion from the respondents was that an industry consultation should always be conducted for all Self-governance Amendment Proposals as a precaution against any changes which may have an effect which had not been considered by the Proposer, the Code Administrator or the Panel. This was agreed by the Working Group with one member stating that a small change may evolve into a change with wider impacts ('the law of unintended consequences'). Therefore it would be a sensible check to enable the industry to put forward any views they may have, via a consultation, to the Panel. The Working Group believed that this would also allow a question to be raised during the consultation whether the industry believes that the particular Amendment Proposal is suitable for the Self-governance route.
- 4.5 The National Grid representative considered that CAP184 better facilitates Applicable CUSC Objective (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this Licence. This CAP184 Amendment Proposal is resulting from Ofgem's review of the Licence and therefore National Grid is mandated by the new Licence obligations to make the changes and additions to the CUSC where applicable.

Working Group Terms of Reference

- 4.6 The Working Group agreed the Terms of Reference for CAP184 and did not wish to include any additional items. The Working Group moved on to complete the actions under the Terms of Reference.
- Confirm that the Authority can direct an Amendment Proposal to the Self-governance process (as well as directing that it should not follow the Self-governance route);
 - Consider the Amendments Panel process for reviewing which route an Amendment Proposal should follow (Significant Code Review, standard

or Self-governance), such that the Panel does not have to undertake multiple assessments for each Proposal;

- Clarify the appeal routes applicable for Self-governance, e.g. when is the Competition Commission appeal route applicable;
- Clarify the appeal criteria for assessment against the Applicable CUSC Objectives, with reference to "at least one of the Applicable CUSC Objectives";
- Review the illustrative legal drafting provided by National Grid for suitability.

Confirm that the Authority can direct an Amendment Proposal to the Self-governance process (as well as directing that it should not follow the Self-governance route)

- 4.7 This point was raised in the 9th July 2010 Panel discussion whereby the response was that the Authority can at any point up to the Panel's final determination, direct an Amendment Proposal to the Self-governance process, or they can direct that it should not follow the Self-governance route. For clarification, a Self-governance statement would not need to be sent to the Authority if they had already directed that the Amendment Proposal should follow the Self-governance process; the Authority would communicate this at the Panel meeting and the decision would be captured within the minutes (therefore, it would be acknowledged by the Authority). In previous workshops, it was questioned how the Authority could make a decision on Self-governance before it was submitted to the first Panel meeting. The response was that the CUSC does not capture any discussions which may be held between the Code Administrator, the Proposer and the Authority, therefore the analysis of the proposal could have been made in advance of it reaching the Panel. However, the earliest the Authority could make a Self-governance decision would be at the first Panel meeting to discuss the Amendment Proposal.

Consider the Amendments Panel process for reviewing which route an Amendment Proposal should follow (Significant Code Review, standard or Self-governance), such that the Panel does not have to undertake multiple assessments for each Proposal

- 4.8 A Working Group member noted that the introduction of the Significant Code Review (SCR) and Self-governance routes meant that the Panel would have to assess each Amendment Proposal against certain criteria to judge how it would progress. To ensure a robust process for carrying out the assessment and to reduce the potential for any steps to be missed out, the legal text should make it clear that a checklist should be followed for the following three categories: (i) SCR, (ii) Self-governance and (iii) the standard CUSC amendments process. It was also clarified that any Amendment Proposal which was considered to be part of an SCR would not follow the Self-governance route as it would have a material impact on the categories as defined in this CAP184 Amendment Proposal and Licence.

Clarify the appeal routes applicable for Self-governance, e.g. when is the Competition Commission appeal route applicable

- 4.9 The Working Group agreed that the appeals process was correctly reflected in the CAP184 Amendment Proposal and indicative legal text. However, one Working Group member thought it would be beneficial for the industry, especially small participants and new entrants, to state when the Competition Commission appeal route would be available. The process for appealing to

the Competition Commission is as follows: where a majority Panel Self-governance decision is different to the Authority decision, a materially affected party may appeal to the Competition Commission for determination. The following table illustrates the scenarios whereby a party can appeal to the Competition Commission.

Panel	Materially affected party	Ofgem	Competition Commission
Implement	Reject	Implement	Cannot appeal
Implement	Reject	Reject	Appeal available
Reject	Reject	Implement	Appeal available

- 4.10 The party which initially appeals a Panel Self-governance decision to the Authority does not have to be the same party which appeals the (Authority) decision to the Competition Commission, as highlighted by the example above. Under Self-governance, an appeal would first have to be made to the Authority for them to make a determination before a materially affected party can appeal to the Competition Commission if it satisfies the criteria as set out above.

Clarify the appeal criteria for assessment against the Applicable CUSC Objectives, with reference to "at least one of the Applicable CUSC Objectives"

- 4.11 The assessment of an appeal against "at least one of the Applicable CUSC Objectives" wording was taken from the Transmission Licence in paragraph 13B.a(ii). The concern for this was raised at the July 2010 Panel meeting where a Panel Member believed that the overall objectives should be assessed against rather than just one of the Applicable CUSC Objectives. The Working Group agreed that this point would be made clear within the Terms of Reference for any future Working Groups when assessing an Amendment Proposal.

Review the illustrative legal drafting provided by National Grid for suitability.

- 4.12 The first Working Group meeting was held on 14th July 2010 during which a page-turning exercise was conducted on the illustrative legal drafting. The main points are summarised below, by paragraph number:

1.1.3 (a) – Amend the phrase "subject to a slightly amended process" to read "subject to a Self-governance modification process"

1.25 – Clarify the phrase "must consult upon" pending outcome of industry responses

25.9 – the Code Administrator should give notice of the outcome of a Self-governance vote rather than the Panel Chairman

25.11 – reference to "23.3 to 23.10" needs to be updated

25.12 – change the reference from "may withdraw" to "may extract", as the term withdrawal is linked to withdrawal of proposals and thus maybe confusing

25.13 – remove the brackets “(by electronic....)” and/or include “make available on the Website”

25.17 – Ensure clarity for the Competition Commission appeal route

28.3 – in relation to the implementation date, suggest the text “which shall be no earlier than 16 Business Days from the date of the report” to allow for the 15 day appeal window

4.13 It was also noted that changes would be required to the standard Working Group Terms of Reference and to the Amendment Proposal form, both of which sit outside the CUSC. National Grid confirmed that it would produce draft versions of both of these documents, updated to reflect all changes required by the Code Governance Review Amendment Proposals for review by the Governance Standing Group and subsequent approval by the Panel, as appropriate.

4.14 The final legal text was provided to the Working Group on 8th September and a further page-turning exercise was carried out by the Working Group on 15th September 2010. The main points are summarised below by paragraph number:

25.2 – include the word “CUSC” in relation to Standard Modification Proposals

25.2 – state the actual paragraphs which the Standard CUSC Modification Proposals relate to 8.19, 8.20, 8.22, and 8.23

25.3 - state the actual paragraphs which the procedure relates to: 8.19, 8.20 and 8.22

25.4 – clarify that the Panel will consult before determining the outcome of a Self-governance proposal

25.10 – clarify paragraph numbering

25.12 – include text on what happens to a modification if the Panel removes it from the Self-governance process (treated as a standard CUSC Modification Proposal)

25.19 – delete paragraph as it may add to confusion over the appeals process

5.0 WORKING GROUP ALTERNATIVE AMENDMENT

5.1 No Working Group Alternative Amendment has been proposed for CAP184.

6.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

6.1 At the third Working Group meeting on 27th August 2010, the Working Group chairman undertook the Working Group vote on an assessment of the CAP184 Amendment Proposal against the CUSC baseline and the Applicable CUSC Objectives.

6.2 The Applicable CUSC Objectives are:

(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and

(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.

6.3 The Working Group believed that CAP184 would better facilitate the CUSC Objective (a) for the reason that National Grid is mandated by the new Transmission Licence obligations to make the changes and additions to the CUSC as set out within the CAP184 proposal and that it 'demonstrably facilitates' the achievement of the Applicable CUSC Objective (a). All members were neutral on whether CAP184 better facilitated the achievement of Applicable objective (b).

6.4 The following table summarises the results of the Working Group's voting, with details of each member's assessment against the Applicable CUSC Objectives. There were a maximum of six Working Group votes available at the meeting, with 5 voting Working Group members present and one Working Group member having been appointed as an alternate to an absent Working Group member. For clarity, the Working Group chairman and the Authority representative do not have a vote.

6.5 Vote 1: Does CAP184 original Amendment Proposal better facilitate the Applicable CUSC Objectives than the CUSC baseline?

Objective	(a)	(b)
Garth Graham	Yes, it demonstrably meets the licence requirements.	Neutral
Garth Graham on behalf of Fiona Navesey	Yes, it demonstrably meets the licence requirements.	Neutral
Steven Eyre	Yes, it demonstrably meets the licence requirements.	Neutral
Stuart Cotten	Yes, it demonstrably meets the licence requirements.	Neutral
Steven Lam (National Grid)	Yes, it meets the licence requirements as set out in the proposal form.	Neutral
Esther Sutton	Yes, it demonstrably meets the licence requirements.	Neutral.

7.0 PROPOSED IMPLEMENTATION

7.1 The Working Group proposes that CAP184 should be implemented ten (10) Business Days after an Authority decision. The seven industry responses agreed that this proposed implementation date seemed reasonable.

7.2 During the Working Group meeting to review the legal text on 15th September 2010, National Grid clarified a point on the implementation of the suite of Code Governance Review proposals. National Grid proposes to replicate the existing legal text contained within paragraph 8.23.6 which contains the transitional arrangements used for CAP160, the most recent significant Governance related CUSC Amendment Proposal implemented. The approach for CAP160 established a precedent that there would be a cut-off for new Amendment Proposals to make it clear which governance arrangements would apply to any given Amendment Proposal.

7.3 The transitional arrangements proposed for CAPs 183, 184, 185 and 188 are that any Amendment Proposal which has been raised and considered by the Amendments Panel at its first meeting to consider such proposal, prior to the implementation of CAPs 183, 184, 185 and 188, will follow the existing governance arrangements in force at the time they were raised. Any Amendment Proposal which is raised and first considered by the Amendments Panel after implementation of CAPs 183, 184, 185 and 188 (whichever is the latest to be implemented), will follow the revised governance arrangements introduced by that package of Amendment Proposals.

7.4 This approach will give clarity to any industry participant of the amendments process that will apply to any new Amendment Proposal raised during the period when CAPs 183,184, 185 and 188 are being considered by the Authority and subsequently implemented (or rejected).

8.0 IMPACT ON THE CUSC

8.1 National Grid provided illustrative legal text to the Working Group for its review, including a change marked version of Sections 8 and 11 of the CUSC. For ease of reference, the illustrative legal text has been placed in a joint Volume 2 Working Group report for the Code Governance Review

CUSC Amendment Proposals 183, 184, 185 and 188 and is available on our website at:

<http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/workingstandin/ggroups/wg/CodeGovernanceReview/>.

- 8.2 At the third Working Group meeting on 27th August 2010, National Grid confirmed that it was in the process of collating all comments on the illustrative legal text, including those from Working Group members and from Ofgem, and would provide an updated draft of the illustrative text to Working Group members for review alongside the draft Working Group report.
- 8.3 The Working Group reviewed the revised draft illustrative legal text, provided by National Grid on 8th September 2010, at a meeting on 15th September 2010. Comments provided by the Working Group were addressed by National Grid and the final illustrative legal text forms part of this Report submitted to the Panel by the Working Group.

9.0 IMPACT ON INDUSTRY DOCUMENTS

Impact on Core Industry Documents

- 9.1 Neither the Proposer nor the Working Group or Working Group Consultation respondents identified any impacts on Core Industry Documents.

Impact on other Industry Documents

- 9.2 Neither the Proposer nor the Working Group or Working Group Consultation respondents identified any impacts on other Industry Documents, although the Proposer noted that a similar modification proposal would be raised to both the Balancing and Settlement Code and the Uniform Network Code in due course to meet the new requirements under the modified Electricity Transmission / Gas Transporter Licences.

10.0 WORKING GROUP VIEW / RECOMMENDATION

- 10.1 The Working Group believes the Terms of Reference (see Annex 2) have been fulfilled and CAP184 has been fully assessed. At the Working Group meeting on the 27th August 2010, six votes were cast which were unanimous in agreeing that CAP184 better facilitated the achievement of CUSC objective (a) than the baseline and should be implemented.
- 10.2 In their extensive discussions with regards to all options, the Working Group did not identify any Alternative Amendments which they wished to progress. This was also reflected in the seven industry responses which did not raise any Consultation Alternative requests for the Working Group to consider.

11.0 NATIONAL GRID INITIAL VIEW

- 11.1 National Grid supports the CAP184 proposal and believes that it best meets applicable CUSC objective (a): *“the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence”*, specifically with regard to the obligation under standard condition C10 of the licence. This proposal results from Ofgem’s review of the Licence and therefore National Grid is mandated by the new licence obligations to make the changes and additions to the CUSC which are set out by CAP184.

12.0 INDUSTRY VIEWS AND REPRESENTATIONS

12.1 Responses to the Working Group Consultation

12.1.1 The following table provides an overview of the representations received. Copies of the representations are contained in Working Group Report Volume 2.

Reference	Company	Supportive	Comments
CAP184-WGC-01	Centrica	Yes	<ul style="list-style-type: none"> Believed that Self-governance amendment proposals should not go straight to a Panel recommendation without conducting an Industry Consultation
CAP184-WGC-02	EDF	Yes	<ul style="list-style-type: none"> Believed that housekeeping amendments with no commercial effect could go straight to Panel recommendation
CAP184-WGC-03	Drax	Yes	<ul style="list-style-type: none"> Believed that Self-governance amendment proposals should not go straight to a Panel recommendation without conducting an Industry Consultation
CAP184-WGC-04	SSE	Yes	<ul style="list-style-type: none"> Believed that Self-governance amendment proposals should not go straight to a Panel recommendation without conducting an Industry Consultation
CAP184-WGC-05	Wyre Power	Yes	<ul style="list-style-type: none"> Believed that Self-governance amendment proposals should not go straight to a Panel recommendation without conducting an Industry Consultation
CAP184-WGC-06	EON	Yes	<ul style="list-style-type: none"> Believed that Self-governance amendment proposals should not go straight to a Panel recommendation without conducting an Industry Consultation
CAP184-WGC-07	SP	Yes	<ul style="list-style-type: none"> Believed that Self-governance amendment proposals should not go straight to a Panel recommendation without conducting an Industry Consultation

12.1.2 No Working Group Consultation Alternative Requests were received.

12.2 Views of Panel Members

No Panel Members responded to the Working Group Consultation in that capacity.

12.3 Views of Core Industry Document Owners

No responses were received from core industry document owners

ANNEX 1 – PROPOSED LEGAL TEXT TO MODIFY THE CUSC

Please see Volume 2 of the Working Group report which contains illustrative legal text for Sections 8 and 11 of the CUSC as reviewed on the 15th September 2010 and a new Section of the CUSC for the Charging Methodologies, published on National Grid's website at the link below:

<http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/workingstandinggroups/wg/CodeGovernanceReview/>

The legal text has been produced as consolidated versions of the relevant CUSC sections, showing all changes for the suite of Code Governance Review Amendment Proposals for ease of review, as follows:

Section 8: CUSC Modification

Section 11: Interpretation and Definitions

These two sections have been colour coded to show which individual Amendment Proposal the textual changes pertain to. The colour coding is as follows:

Dark purple: CAP183: Significant Code Review

Pale green: CAP184: Self-governance

Turquoise: CAP185: Role of Code Administrator/CACOP

Dark green: CAP186: Send Back (NB. This has been included for completeness; the proposed legal text against the existing baseline has been published with CAP186)

Orange: CAP187: Environmental assessment (NB. This has been included for completeness; the proposed legal text against the existing baseline has been published with CAP187)

Bright pink: CAP188: Governance of charging methodologies

Given the number of proposed changes in each of the sections, we have also produced a "clean" copy of each section which are also contained in volume 2.

Please note that the illustrative text currently contains a number of footnote references which have been used during drafting to cross-reference the textual changes to the relevant licence obligations. These footnotes do not form part of the proposed CUSC changes and will be removed prior to the final version of the text submitted to the Authority.

ANNEX 2 – WORKING GROUP TERMS OF REFERENCE AND MEMBERSHIP

Working Group Terms of Reference and Membership

TERMS OF REFERENCE FOR CAP183, CAP184, CAP185 and CAP188 WORKING GROUP(S)

RESPONSIBILITIES

1. The Working Group is responsible for assisting the CUSC Amendments Panel in the evaluation of the following CUSC Amendment Proposals tabled by National Grid Electricity Transmission plc at the special Amendments Panel meeting on 9th July 2010.
 - CAP183 - Code Governance Review: Significant Code Review
 - CAP184 – Code Governance Review: Self Governance
 - CAP185 – Code Governance Review: Role of Code Administrator and Code Administration Code of Practice
 - CAP188 – Code Governance Review: Governance of Charging Methodologies
2. The proposal(s) must be evaluated to consider whether it better facilitates achievement of the Applicable CUSC Objectives. These can be summarised as follows:
 - (a) the efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence; and
 - (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.
3. It should be noted that additional provisions apply where it is proposed to modify the CUSC amendment provisions, and generally reference should be made to the Transmission Licence for the full definition of the term. For the avoidance of doubt, these additional provisions are set out in Condition C10, paragraph 6 of the Transmission Licence.

SCOPE OF WORK

4. The Working Group(s) must consider the issues raised by the Amendment Proposal(s) and consider if the proposal(s) identified better facilitates achievement of the Applicable CUSC Objectives.
5. In addition to the overriding requirement of paragraph 4, the Working Group(s) shall consider and report on the following specific issues.

CAP183: Significant Code Review

- Clarify when an SCR starts/ends;
- Clarify the role of the Amendments Panel in the exemption process;
- Clarify the arrangements for withdrawal and adoption of an Amendment Proposal resulting from an SCR direction;
- Review the illustrative legal drafting provided by National Grid for suitability.

CAP184: Self-governance

- Confirm that the Authority can direct an Amendment Proposal to the Self-governance process (as well as directing that it should not follow the Self-governance route);
- Consider the Amendments Panel process for reviewing which route an Amendment Proposal should follow (Significant Code review, standard or self-governance), such that the Panel does not have to undertake multiple assessments for each Proposal;
- Clarify the appeal routes applicable for self-governance, e.g. when is the Competition Commission appeal route applicable;
- Clarify the appeal criteria for assessment against the Applicable CUSC Objectives, with reference to "at least one of the CUSC objectives";
- Review the illustrative legal drafting provided by National Grid for suitability.

CAP185: Role of Code Administrator and Code Administration Code of Practice

- Clarify the future role of a "deputy chair" for the Amendments Panel; if the Panel Chairman is independent, who can undertake the role of deputy?;
- Confirm whether the requirement for the Code Administrator to seek the approval of the Amendments Panel prior to raising a change to the Code of Practice should be included within the CUSC;
- Review the illustrative legal drafting provided by National Grid for suitability.

CAP188: Governance of Charging Methodologies

- Clarify whether a proposal to change the Charging Methodologies has to be stand-alone or whether it can form part of a wider proposal to amend the CUSC;
- Consider "charging windows" (restriction to period for raising charging-related Amendment Proposals);
- National Grid to provide a change marked version of the existing charging methodologies for inclusion in the CUSC for review by the Working Group;
- Review the illustrative legal drafting provided by National Grid for suitability.

6. The Working Group(s) is responsible for the formulation and evaluation of any Working Group Alternative Amendments (WGAA) arising from Group discussions which would, as compared with the Amendment Proposal or the current version of the CUSC, better facilitate achieving the Applicable CUSC Objectives in relation to the issue or defect identified.
7. The Working Group(s) should become conversant with the definition of Working Group Alternative Amendment which appears in Section 11 (Interpretation and Definitions) of the CUSC. The definition entitles the Group and/or an individual member of the Working Group to put forward a WGAA if the member(s) genuinely believes the WGAA would better facilitate the achievement of the Applicable CUSC Objectives, as compared with the Amendment Proposal or the current version of the CUSC. The extent of the support for the Amendment Proposal or any WGAA arising from the Working Group's discussions should be clearly described in the final Working Group Report to the CUSC Amendments Panel.
8. Working Group members should be mindful of efficiency and propose the fewest number of WGAA's possible.
9. All proposed WGAA's should include the Proposer(s)'s details within the final Working Group report, for the avoidance of doubt this includes WGAA's which are proposed by the entire Working Group or subset of members.

10. There is an obligation on the Working Group to undertake a period of Consultation in accordance with CUSC 8.17. The Working Group Consultation period shall be for a period of three weeks as determined by the Amendments Panel.
11. Following the Consultation period the Working Group is required to consider all responses including any WG Consultation Alternative Requests. In undertaking an assessment of any WG Consultation Alternative Request, the Working Group should consider whether it better facilitates the Applicable CUSC Objectives than the current version of the CUSC.

As appropriate, the Working Group will be required to undertake any further analysis and update the original Amendment Proposal and/or WGAAAs. All responses including any WG Consultation Alternative Requests shall be included within the final report including a summary of the Working Group's deliberations and conclusions. The report should make it clear where and why the Working Group chairman has exercised his right under the CUSC to progress a WG Consultation Alternative Request or a WGAA against the majority views of Working Group members. It should also be explicitly stated where, under these circumstances, the Working Group chairman is employed by the same organisation who submitted the WG Consultation Alternative Request.

12. The Working Group is to submit its final report to the Amendments Panel Secretary on for circulation to Panel Members. The final report conclusions will be presented to the Amendments Panel meeting on 29th October 2010.

MEMBERSHIP

13. The following individuals have nominated themselves to be Working Group members:

Role	Name	Representing
Chairman	David Smith	National Grid
National Grid Representative*	Steve Lam Emma Clark Alex Thomason	National Grid
Industry Representatives*	Garth Graham	SSE
	Stuart Cotten	Drax Power Ltd
	Esther Sutton	E.ON UK plc
	Paul Mott	EDF Energy
	Fiona Navesey	Centrica Energy
	Steven Eyre	EDF Energy
Authority Representative	Jon Dixon/Abid Sheikh	Ofgem
Technical Secretary	Ben Smith	National Grid
Observers		

NB: A Working Group must comprise at least 5 members (who may be Panel Members). The roles identified with an asterisk in the table above contribute toward the required quorum, determined in accordance with paragraph 14 below.

14. The chairman of the Working Group and the Amendments Panel Chairman must agree a number that will be quorum for each Working Group meeting. The agreed figure for CAPs 183, 184, 185 and 188 is that at least five Working Group members must participate in a meeting for quorum to be met. At the Amendments Panel meeting on 9th July 2010, the Panel noted the limited number of Working Group members and agreed in principle that progress of the Working Group(s) should not be halted should a meeting of the Working Group(s) not be quorate.

15. A vote is to take place by all eligible Working Group members on the Amendment Proposal and each WGAA. The vote shall be decided by simple majority of those present at the meeting at which the vote takes place (whether in person or by teleconference). The Working Group chairman shall not have a vote, casting or otherwise. There may be up to three rounds of voting, as follows:
- Vote 1: whether each proposal better facilitates the Applicable CUSC Objectives;
 - Vote 2: where one or more WGAA's exist, whether each WGAA better facilitates the Applicable CUSC Objectives than the original Amendment Proposal;
 - Vote 3: which option is considered to BEST facilitate achievement of the Applicable CUSC Objectives. For the avoidance of doubt, this vote should include the existing CUSC baseline as an option.

The results from the vote and the reasons for such voting shall be recorded in the Working Group report in as much detail as practicable.

16. It is expected that Working Group members would only abstain from voting under limited circumstances, for example where a member feels that a proposal has been insufficiently developed. Where a member has such concerns, they should raise these with the Working Group chairman at the earliest possible opportunity and certainly before the Working Group vote takes place. Where abstention occurs, the reason should be recorded in the Working Group report.
17. Working Group members or their appointed alternate are required to attend a minimum of 50% of the Working Group meetings to be eligible to participate in the Working Group vote.
18. The Technical Secretary shall keep an Attendance Record for the Working Group meetings and circulate the Attendance Record with the Action Notes after each meeting. This will be attached to the final Working Group report.
19. The Working Group membership can be amended from time to time by the CUSC Amendments Panel.

RELATIONSHIP WITH AMENDMENTS PANEL

20. The Working Group shall seek the views of the Amendments Panel before taking on any significant amount of work. In this event the Working Group chairman should contact the Amendments Panel Secretary.
21. The Working Group shall seek the Amendments Panel's advice if a significant issue is raised during the Consultation process which would require a second period of Consultation in accordance with 8.17.17 of the CUSC.
22. Where the Working Group requires instruction, clarification or guidance from the Amendments Panel, particularly in relation to their Scope of Work, the Working Group chairman should contact the Amendments Panel Secretary.

MEETINGS

23. The Working Group shall, unless determined otherwise by the Amendments Panel, develop and adopt its own internal working procedures and provide a copy to the Panel Secretary for each of its Amendment Proposals.

Reporting

24. The Working Group chairman shall prepare a final report for the October 2010 Amendments Panel meeting, responding to the matters set out in the Terms of

Reference, including all Working Group Consultation Responses and Alternative Requests.

25. A draft Working Group report must be circulated to Working Group members with not less than five Business Days given for comments, unless all Working Group members agree to three Business Days.
26. Any unresolved comments within the Working Group must be reflected in the final Working Group report.
27. The chairman (or another member nominated by him) will present the Working Group report to the Amendments Panel as required.

Appendix 1: Indicative Working Group(s) Timetable

Please note this timetable has been updated to reflect the additional initial Working Group meeting held on 21st July 2010 and consequential delays to the timetable.

9 th July 2010	Special Amendments Panel meeting – agree Working Group Terms of Reference
14 th July 2010	First Working Group meeting
21 st July 2010	Second Working Group meeting (teleconference)
4 th August 2010	Publish Working Group consultations (for three weeks)
25 th August 2010	Deadline for Working Group consultation responses
27 th August 2010	Post-consultation Working Group meeting (to review consultation responses, confirm any alternatives and undertake Working Group vote)
* 3 rd Sept 2010	Publish draft Working Group reports for comment
* 10 th Sept 2010	Deadline for comments on Working Group reports
* 16 th Sept 2010	Publish final Working Group reports (5 Working Days' notice to Panel)
* 24 th Sept 2010	Amendments Panel meeting to discuss Working Group reports (an additional "special" Panel meeting was previously proposed)
* 27 th Sept 2010	Issue industry consultations (for two weeks)
* 11 th Oct 2010	Deadline for industry responses
* 13 th Oct 2010	Draft Amendment Reports published for industry comment
* 20 th Oct 2010	Deadline for industry comment
* 21 st Oct 2010	Draft Amendment Reports published prior to Panel Recommendation Vote (with Panel papers)
* 29 th Oct 2010	Amendments Panel meeting – Panel Recommendation Vote
* 5 th Nov 2010	Send final Amendments Reports to Authority
* 10 th Dec 2010	Indicative Authority decision date (25 Working Day KPI)
* 24 th Dec 2010	Indicative implementation date (10 Working Days after Authority decision)

** These dates are based on the premise that no WG Consultation Alternative Requests are made. Should further work be required to consider WG Consultation Alternative Requests or WGAAAs, this part of the process may be delayed and a further extension to the report submission deadline to the Amendments Panel meeting may be required.*

ANNEX 3 – AMENDMENT PROPOSAL FORM

CUSC Amendment Proposal Form	CAP:184
Title of Amendment Proposal: Code Governance Review: Self-governance	
Description of the Proposed Amendment (<i>mandatory by proposer</i>):	
<p>This Amendment Proposal is part of a series of proposals raised by National Grid to implement the Final Proposals of the Code Governance Review which was initiated by Ofgem in November 2007. The review sought to address concerns that the existing code arrangements may be too complex and inaccessible to smaller market participants. Given the Authority's evolving role with the introduction of additional statutory duties and the right of appeal to the Competition Commission, such a review was considered to be conducted at an appropriate time.</p> <p>Ofgem published its Final Proposals for the Code Governance Review in March 2010, followed by its statutory consultation on licence modifications on 3rd June 2010. National Grid did not object to the licence modifications. As part of the suite of work strands conducted by the Code Governance Review, one of the proposals identified was the introduction of a Self-governance route. The Self-governance proposal seeks to allow the industry greater control over Amendments and in effect reduce the regulatory burden where it is deemed by the Authority that an Amendment can be progressed via the self governance route.</p> <p>This Amendment Proposal seeks to introduce a new process for those Amendments which are deemed to have non material changes or impacts to the following:</p> <ul style="list-style-type: none"> • Existing or future electricity consumers • Operation of the National Electricity Transmission System (NETS) • Security or safety of supply or sustainable development • Competition • CUSC governance or modification procedures <p>National Grid proposes the following Amendment to the CUSC to insert the following process:</p> <ol style="list-style-type: none"> (i) Where a Proposer has specifically indicated that they would like the Amendment Proposal to be considered as Self-governance, the rationale for this will have to be given within the proposal form. The Panel may still consider the Self-governance route for an Amendment Proposal regardless of whether the proposer has indicated this on the proposal form. (ii) Where, in the view of the Amendments Panel, it has been decided that the Amendment Proposal meets the Self-governance criteria; the Panel would submit a Self-governance statement to the Authority, which would provide detailed reasons behind the Panel's opinion. (iii) The Panel may optionally decide to hold Working Groups or consult on the suitability of the Self-governance route. (iv) The Authority may veto the Self-governance decision at any time up until the Panel makes their final determination. If the Self-governance decision is vetoed, then the final Amendment report would be presented to the Authority for determination. (v) Up until the final determination, the Panel may withdraw the Self-governance statement, whereby the Final Amendment report would be presented to the Authority for determination. (vi) The consultation responses would have to be submitted to the Authority at least seven calendar days before the final determination by the Panel, unless it has been deemed by the Authority that the Panel is exempt from submitting the consultation responses. (vii) The Panel would determine based on the assessment against the applicable CUSC objectives. (viii) The Panel would notify the Code Administrator of the determination who would subsequently inform the Industry of the Panel decision. 	

- (ix) After the final determination by the Panel, the Amendment should be implemented providing no appeal has been raised up to and including 15 Business Days after the Panel's determination.
- (x) The Panel Chairman will have a casting vote in the event of a deadlock when the Panel is required to make a determination.
- (xi) The implementation of a Self-governance proposal would be suspended pending the outcome of an appeal.
- (xii) The Self-governance Amendment Proposal will replace the current Housekeeping Amendments process within Section 8.21.2 of the CUSC.

Appeals

- (xiii) Up to and including 15 Business Days from the final determination, a party may appeal against the Amendment Proposal decision, rather than the Self-governance process. However, this will be assessed based on whether it meets the grounds for appeal:
 - The Amendment does not better facilitate the achievement of at least one of the CUSC objectives
 - The Amendment Proposal is not brought for reasons that are trivial, vexatious or have no reasonable prospect of success.
- (xiv) The appeals will be sent to the Authority to take the decision on the implementation of the Amendment Proposal if required. A copy of the appeal would have to be sent to the Code Administrator who would notify the Panel and the rest of the industry.
- (xv) The routes of appeal are as follows:
- (xvi) **Route 1:** The Authority may make a decision to uphold the appeal and decide on implementation/non implementation or they may uphold the Panel's decision.
- (xvii) **Route 2:** The Authority may refer the decision back to the Panel for consideration whilst retaining the Self-governance route or the Authority may refer back to the Panel and veto the Self-governance decision in which case the Authority will make the final determination. In both cases the Panel can make the same recommendation as originally presented to the Authority.
- (xviii) If a party does not agree with the decision made by the Authority, then this can be appealed to the Competition Commission.

Description of Issue or Defect that Proposed Amendment seeks to Address (**mandatory by proposer**):

The Code Governance Review seeks to implement Self-governance within the Transmission Licence to improve the existing code arrangements. Where it is determined that a proposal will not have a material impact on the categories set out above, this amendment will expedite the process of implementing an amendment, providing the Industry agrees with the proposal.

Impact on the CUSC (*this should be given where possible*):

Initial assessment of the CUSC suggests that changes are required to section 8 of the CUSC

Impact on Core Industry Documentation (*this should be given where possible*):

None anticipated

Impact on Computer Systems and Processes used by CUSC Parties (*this should be given where possible*):

None anticipated

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

National Grid intends to raise similar proposals to both the BSC and the UNC, in line with the timetable which has been published to the industry in June 2010. These Modification Proposals will

not interact with the changes proposed to the CUSC.

Justification for Proposed Amendment with Reference to Applicable CUSC Objectives** (**mandatory by proposer**):

National Grid considers that implementation of this Amendment Proposal would better facilitate the following Applicable CUSC Objective:

(a): "the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence", specifically with regard to the obligation under standard condition C10 of the licence.

This proposal is resulting from Ofgem's review of the Licence and therefore National Grid is mandated by the new licence obligations to make the changes and additions to the CUSC where applicable.

Details of Proposer: Organisation's Name:	National Grid
Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or "National Consumer Council")	CUSC Party
Details of Proposer's Representative: Name: Organisation: Telephone Number: Email Address:	Steven Lam National Grid Electricity Transmission plc 01926 653534 Steven.lam@uk.ngrid.com
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Alex Thomason National Grid Electricity Transmission plc 01926 656379 Alex.thomason@uk.ngrid.com
Attachments (Yes): If Yes, Title and No. of pages of each Attachment: 2 pages – Self-governance and Self-governance appeals	

Notes:

1. 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.
2. 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.

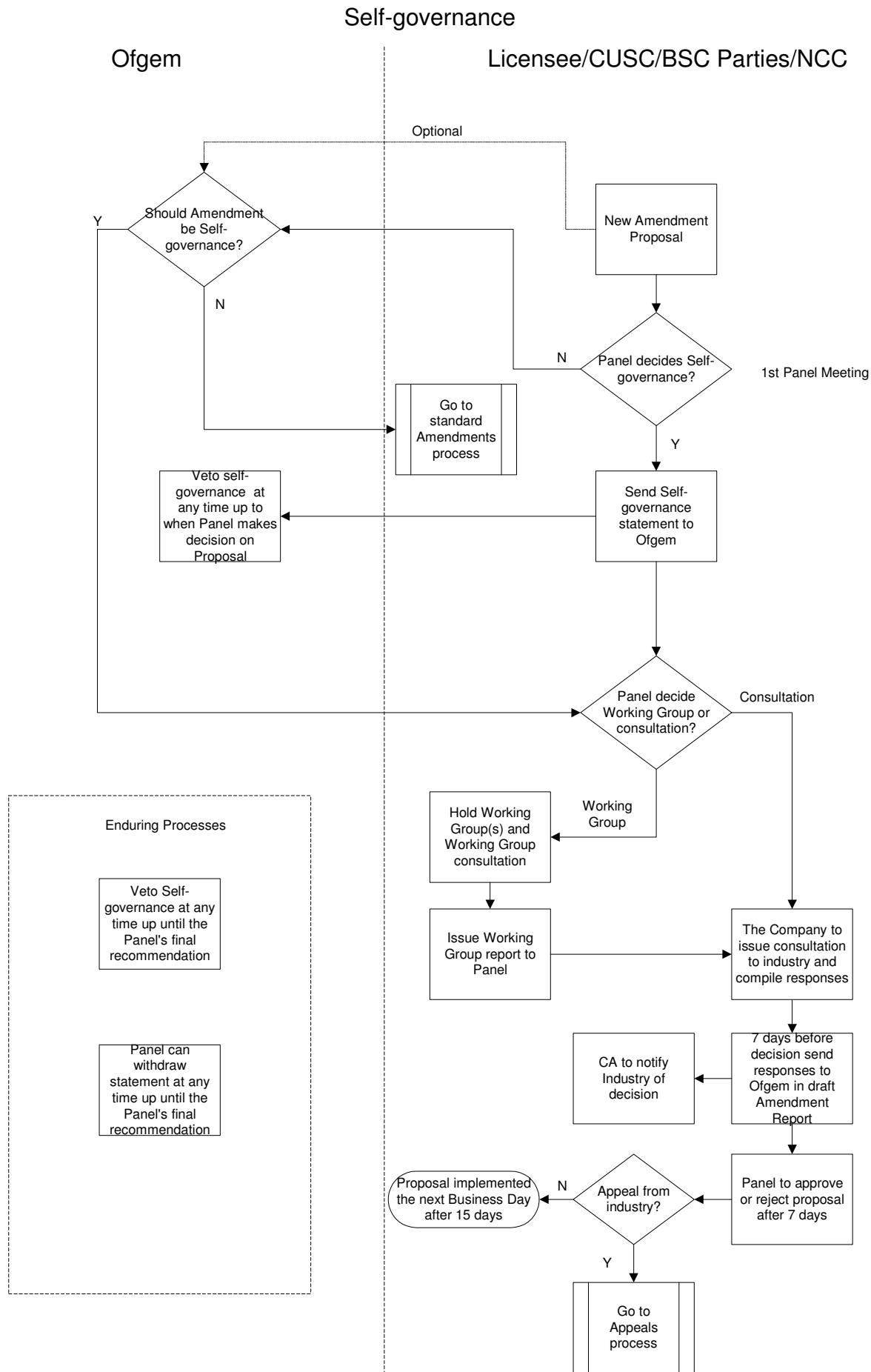
The completed form should be returned to:

Steven Lam
Commercial
National Grid
National Grid House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

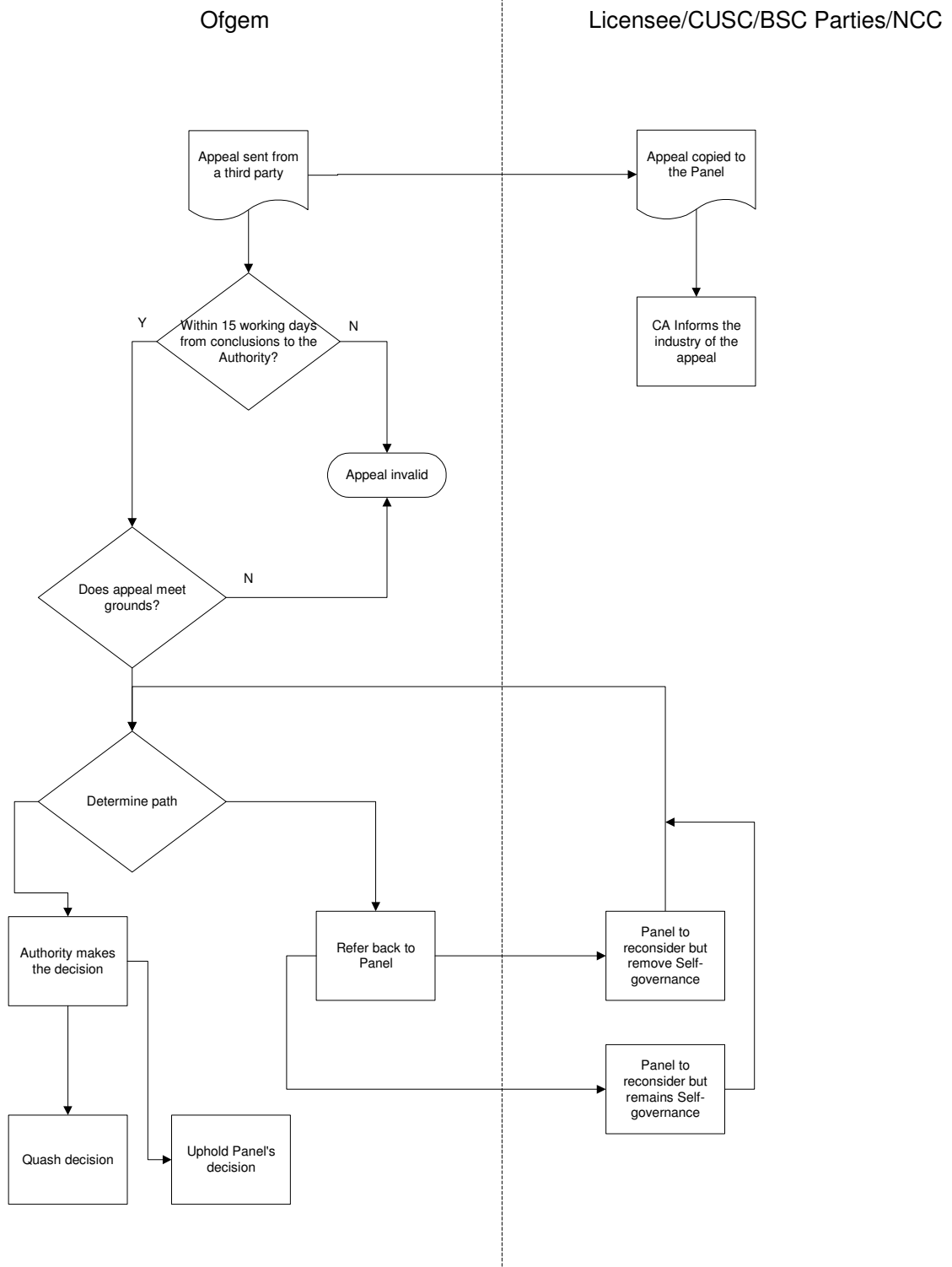
Or via e-mail to: steven.lam@uk.ngrid.com

(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 Electricity Transmission plc Licence under Standard Condition C10, paragraph 1. Reference should be made to this section when considering a proposed amendment.



Self-governance appeals



ANNEX 4 – WORKING GROUP ATTENDANCE REGISTER

Name	Organisation	Role	14/07/10	21/07/10	27/08/10	15/09/10 (legal text page-turning)
David Smith	National Grid	Chairman	Yes	Yes	Yes	No
Ben Smith	National Grid	Technical Secretary	Yes	Yes	No	No
Emma Clark	National Grid	National Grid representative (CAP185)	Yes	No	Yes	Yes
Steve Lam	National Grid	National Grid representative (CAP183/184)	Yes	Yes	Yes	Yes
Alex Thomason	National Grid	National Grid representative (CAP188)	Yes	Yes	Yes	Yes
Garth Graham	SSE	Working Group Member	Yes	Yes	Yes	Yes
Stuart Cotten	Drax Power	Working Group Member	Yes	Yes (via teleconference)	Yes	No
Esther Sutton	E.ON UK	Working Group Member	Yes	Yes (via teleconference)	Yes (via teleconference)	Yes
Paul Mott	EDF Energy	Working Group Member	Yes	Yes (via teleconference)	No	No
Steven Eyre	EDF Energy	Working Group Member	No	No	Yes	Yes
Fiona Navesey	Centrica Energy	Working Group Member	Yes	Yes – part meeting (via teleconference)	No (GG acted as alternate)	No
Jon Dixon	Ofgem	Authority representative	Yes	Yes - part meeting (via teleconference)	No	Yes (via teleconference)
Abid Sheikh	Ofgem	Authority representative	No	No	Yes (via teleconference)	No