

# Stage 06: Final CUSC Modification Report

## Connection and Use of System Code (CUSC)

### CAP190 Two-Thirds majority voting requirement for CUSC Panel recommendations on Amendments arising from licence obligations, Authority requests or obligations

This proposal seeks to amend the CUSC in order that, where a Modification Proposal and any Workgroup Alternative CUSC Modification (WACM) has been raised to comply with a Licence change, or following an Authority direction, request, obligation, or instruction, a two-thirds majority vote would be required to recommend approval

What stage is this document at?

01	Initial Written Assessment
02	Workgroup Consultation
03	Workgroup Report
04	Code Administrator Consultation
05	Draft CUSC Modification Report
06	Final CUSC Modification Report

**Date of Issue:** 10<sup>th</sup> November 2011



***The CUSC Modifications Panel recommends:***

*That CAP190 should be implemented as it better facilitates Applicable CUSC Objective (b).*



***High Impact:***

CUSC Modifications Panel

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### Any Questions?

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## About this document

This is the CUSC Modification Report which contains details of the CUSC Modifications Panel Vote. This document has been prepared and issued by National Grid under the rules and procedures specified in the CUSC. In light of the developments in CAP190 and subsequently the Workgroup timetable not being extended, no Workgroup Consultation has been carried out and no Workgroup conclusion has been reached on whether CAP190 better facilitates the Applicable CUSC Objectives. The purpose of this document is to assist the Authority in their decision whether to implement CAP190.

## Document Control

Version	Date	Author	Change Reference
1.0	10/11/11	National Grid	Final version for submission to Authority

## 1 Summary

- 1.1 CAP190 was proposed by Wyre Power on 3 September 2010. The Modifications Panel determined that the proposal should be considered by a Workgroup and that the Workgroup should report back to the CUSC Modifications Panel meeting within four months following a period of Workgroup Consultation.
- 1.2 CAP190 seeks to amend the CUSC in order that, where a Modification Proposal and any Workgroup Alternative CUSC Modification (WACM) has been raised to comply with a Licence change, or following an Authority direction, request, obligation, or instruction, a two-thirds majority vote would be required to recommend approval. A like for like proposal, P264 – ‘Two-thirds majority requirement for Panel recommendations on licence originated Modifications’, was raised under the BSC and Workgroup discussions were held in conjunction with CAP190. A similar proposal was also raised under the UNC - 0312 ‘Introduction of two-thirds majority voting to the UNC Modification Panel. These proposals have recently been rejected by the Authority.
- 1.3 A Workgroup for CAP190 was established and the first meeting held on 23<sup>rd</sup> September 2010. Following discussions at that meeting it was agreed that advice would be sought from a QC with respect to a view of the interpretation of the Statutory Instrument (SI) with regard to the Competition Commission appeal. It was agreed that a legal brief would be drafted jointly by National Grid and ELEXON for the purpose of both CAP190 and P264 and reviewed by members of the Workgroup prior to submission to the QC. Two joint Workgroup teleconferences were held on 27<sup>th</sup> October 2010 and 10<sup>th</sup> December 2010 to discuss the legal advice and further actions following receipt of the draft advice from the QC. A meeting was arranged with the QC between National Grid, ELEXON, the Proposers of P264 and CAP190 and two other Workgroup members and this took place on 21<sup>st</sup> January 2010. Attendance for the Workgroup meetings can be found in Annex 1 of Volume 2.
- 1.4 Following the QC meeting, a joint Workgroup teleconference was held on 26<sup>th</sup> January 2011 to discuss the outcome of the meeting and next steps. The QC advice had the result that P264 could be progressed but that CAP190 as it remained would have no effect if implemented due to interpretation of the SI and ambiguities with the term ‘recommendation’. The Proposer of CAP190 did not wish to withdraw CAP190 and instead the Workgroup recommended to the Panel to put CAP190 on hold for three months pending investigations into changing the SI. The CUSC Panel was informed of the update and delays to the timetable at its meeting on 28<sup>th</sup> January 2011. The Panel expressed concerns about the length of time taken to progress CAP190 further and approved a one month delay whilst advice was sought in changing the SI.
- 1.5 A letter was prepared and sent to the Department of Energy and Climate Change (DECC) on 21 February 2011 illustrating the issues that had arisen from CAP190. This letter is contained in Annex 4 of Volume 2. A further one month extension was sought at the February CUSC Panel in order to allow time for a response from DECC to be received. At the CUSC Panel meeting a number of members expressed a concern highlighted in the QC’s advice that multiple ‘recommendations’ in the final CUSC Modifications Report could potentially lead to an appeal to the Competition Commission being disallowed and suggested that this issue should be dealt with as a priority. The Panel therefore requested that National Grid, as Code Administrator reviewed the CUSC provisions in this area and advise on a potential solution.

- 1.6 A response from DECC to the Workgroup's letter was received on 16 March 2011. The response advised that due to workload and time constraints and the fact that this issue was not deemed to be of an urgent nature, it would be appropriate to consider other alternatives in order to find a solution instead of via legislation. This letter can be found in Annex 5 of Volume 2. The CAP190 Workgroup held a further meeting on 24 March 2011 to discuss the DECC response and the findings from National Grid as Code Administrator as to what alternative solution could be found to the issue. It was agreed to pursue a resolution to alter the wording in the CUSC through the raising of another CUSC Modification Proposal: CMP196. This is discussed in more detail in Section 3. In light of this the CUSC Panel agreed to put CAP190 on hold until July 2011 whilst CMP196 was progressed.
- 1.7 On 20 July 2011, the Authority published letters in relation to UNC Modification Proposal 0312 and BSC Modification Proposal P264 which informed the industry that these proposals have been rejected. These letters can be found in Annex 6 of Volume 2. At the July CUSC Panel meeting, the Panel agreed by majority that the Workgroup timetable for CAP190 should not be extended further. However, the Proposer felt that CAP190 should not be withdrawn in order to provide the industry with the opportunity to respond to the issues raised by CAP190 via the Code Administrator Consultation.
- 1.8 The CAP190 Workgroup Report was presented to the CUSC Modifications Panel at its meeting on 26<sup>th</sup> August. The Panel, having not granted an extension to the Workgroup timetable, accepted that the Workgroup could not have fulfilled its full Terms of Reference, but agreed that CAP190 should proceed to the Code Administrator Consultation.
- 1.9 This CUSC Modifications Report has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid website at [www.nationalgrid.com/uk/Electricity/Codes](http://www.nationalgrid.com/uk/Electricity/Codes), along with the CUSC Modification Proposal form.

### **Workgroup Conclusion**

- 1.10 In light of the CAP190 Workgroup timetable not being extended following industry developments relating to equivalent industry code modification proposals, the Workgroup has not reached a conclusion on the implementation of CAP190.

### **National Grid Opinion**

- 1.11 National Grid does not support the implementation of CAP190 on the grounds that it does not believe that CAP190 better fulfils the Applicable CUSC Objectives. Section 6 contains further details.

### **CUSC Modifications Panel Recommendation**

- 1.12 The CUSC Modifications Panel voted by majority that CAP190 better facilitates Applicable CUSC Objective (b). Full details of the vote can be found in Section 6 of this report.

## 2 Description of Proposed Modification



### How does a Competition Commission Appeal work?

The Competition Commission has a number of criteria that must be met before an appeal can be considered, namely that an Authority decision on a CUSC Modification Proposal must be contrary to the majority recommendation of the CUSC Panel. If the Authority decision is in agreement with the Panel recommendation, no appeal can be raised.

Further information on the Competition Commission appeals process can be found at the following link:

<http://www.competition-commission.org.uk/appals/energy/>

- 2.1 CAP190 has arisen from the implementation of Ofgem's Code Governance Review which led to certain changes to National Grid Electricity Transmission plc's Transmission Licence. One aspect of these changes was the ability for the Authority to place an obligation on the Licensee to raise one or more CUSC Modification Proposals following a Significant Code Review (SCR). The Proposer believes that Modification Proposals that arise from Licence obligations may have significant impacts and commercial implications which have possibly been discussed previously without reaching an agreement, and are therefore likely to be contentious.
- 2.2 CAP190 proposes that when the CUSC Modifications Panel vote on its final recommendation for a CUSC Modification Proposal resulting from an Authority request, direction or instruction, a two-thirds majority vote would be required to recommend approval. This means that the number of votes cast in favour of approval would have to be at least twice the number as against approval. The table below demonstrates how voting would work should a two-thirds majority be required.

Total Votes cast	Votes required "for"	Votes required "against"
9	6	3
8	6	2
7	5	2
6	4	2

- 2.3 This is in contrast to the current vote which requires a simple majority (i.e. over 50%). Therefore the current Panel voting process could result in a single vote making a recommendation to the Authority and removing the right of appeal to the Competition Commission. For CUSC Modification Proposals that have not been raised as a result of a direction from the Authority, the voting would remain as a simple majority vote.

### CUSC Modifications Panel membership

- 2.4 CAP190 does not propose any changes to the membership of the CUSC Modifications Panel; this information is provided for information only. The CUSC Modifications Panel consists of the following members:
- 7 Industry elected members (one vote each)
  - 1 National Consumer Council member (one vote)
  - 2 National Grid members (one vote between them)
  - 1 Panel Chairman (no vote for Panel recommendations)
  - 1 Authority representative (no vote)
- 2.5 There is a provision in the CUSC to allow the Authority to appoint an additional Panel Member, where the Authority considers that there is a class or category of person who has interests in the CUSC but whose interests are not reflected in the make up of the Panel Members at any particular time. Currently, there is no Panel Member appointed by the Authority.
- 2.6 The CUSC requires there to be six votes present in order for a Panel meeting to be quorate, although votes can be passed from a Panel Member

to an alternate where that Panel Member is unable to attend a meeting, therefore there may not be six individual Panel Members present at a quorate meeting. As outlined above, the Panel Chairman does not have a casting vote for Panel recommendations and there can only be one vote between the two National Grid members, therefore a maximum of 9 votes can be cast.

### 3 Summary of Workgroup Discussions

#### Presentation of proposal

- 3.1 The first CAP190 Meeting was held on 23<sup>rd</sup> September 2010. The Workgroup Chair invited the Proposer of CAP190 to give a presentation of the CUSC Modification Proposal. Background was provided on how the Proposal came to fruition and its intention as described in section 3 above. Discussion arose as to where CAP190 may apply and the Proposer clarified that the issue centred around how Ofgem can make requests or directions and that regulated monopolies such as National Grid were most likely to be affected. The Proposer stressed the importance of CAP190 in allowing for an open route of appeal

#### Discussion of Terms of Reference

- 3.2 When discussing the Terms of Reference for CAP190, the group debated the wording used in applying the two-thirds majority vote to Panel Recommendations. The group agreed that the following criteria should be reflected in any draft legal text and the Workgroup Report.

Where a Proposer raises a CUSC Modification Proposal as a result of:

- a) an Authority or Ofgem request, direction or instruction (verbally or in writing, including email);
  - b) where the Authority or Ofgem compels or coerces a party to raise a Proposal;
  - c) where the Authority or Ofgem is the effective progenitor of a CUSC Modification Proposal
- 3.3 The Workgroup felt that it was necessary to distinguish between the Authority and Ofgem and that CAP190 applied to both when making reference in this context. The group also clarified that CAP190 would cover CUSC Modifications that are fulfilling a SCR conclusion, in part or in full and also proposals that are subsumed into or suspended during a SCR process.
- 3.4 At the first Workgroup meeting, the possibility of seeking external legal advice was discussed. This had been raised at the first Workgroup for P264 in order to clarify whether the proposed solution could be progressed via changes to the BSC and CUSC, specifically concerning interpretation of the SI with regard to appeals and the use of the term 'majority'. The group felt that it was pragmatic to seek advice from a QC in this respect and it was agreed that a joint legal brief by ELEXON and National Grid would be compiled, with input from the Workgroup, and sent to a QC.
- 3.5 An additional issue raised in the CUSC Modification Proposal form was regarding the view that 'The Company member [who] may feel obliged to vote for the Proposal they have been required to raise'. At the first meeting on 23<sup>rd</sup> September 2010, the National Grid representative in the Workgroup advised the group that the National Grid Panel Member is required to act impartially and in accordance with the CUSC and would have to justify their views against the Applicable CUSC Objectives.

#### QC Legal Advice

- 3.6 A second meeting was held jointly with P264 via teleconference on 27<sup>th</sup> October 2010 in order to finalise the legal brief and agree the set of questions that would be asked as part of the brief. Further to the meeting,

the legal brief was finalised and sent to the QC on 8<sup>th</sup> November 2010. The joint legal brief can be found within Annex 2 of Volume 2.

- 3.7 Upon receipt of the draft legal advice on 25<sup>th</sup> November 2010, it was agreed that a meeting with the QC would be appropriate in order to discuss the advice further and gain clarity of some of the issues raised. The advice had unexpectedly raised an issue with CAP190 which had the possible effect of CAP190 being unable to continue as it stood. This was because of the term 'majority recommendation' referred to in the SI and ambiguity as to which recommendation it actually referred to. The QC concluded that the recommendation could be that which is contained in the Amendment Report, as, at the time of writing the SI, there was no such thing as a CUSC Panel Recommendation. In addition, the wording in the SI also refers to 'Panel Members' as opposed to the 'Amendments Panel' which suggests that the emphasis is on the view of each Panel Member and not the Panel itself.
- 3.8 A second issue highlighted by the advice, which has a cross-code effect and not specific to CAP190, is that the wording of the SI indicates that there is a right of appeal to the Competition Commission if the Authority rejects a Proposal, regardless of whether there has been a recommendation to approve by the Panel. This is contrary to industry understanding, where an appeal is allowed only if the Authority determination is contrary to that of the Panel recommendation. This understanding arises out of interpretation of the DTI's response to the consultation on the draft order for the Energy Act 2004 which is contained within a footnote in the legal brief in Annex 2 of Volume 2.
- 3.9 In preparation for a meeting with the QC, a third joint meeting was held via teleconference on 10<sup>th</sup> December 2010 to discuss the draft advice provided by the QC and to agree a set of questions to ask at the meeting in order to better understand the advice and specifically to address the issues raised in relation to CAP190. Following cancellation of the QC meeting arranged for 17<sup>th</sup> December 2010 due to unforeseen circumstances, a meeting was scheduled for 21<sup>st</sup> January 2011 in which the Proposers of P264 and CAP190 attended, along with two other Workgroup members and Company and Legal Representatives from National Grid and ELEXON.
- 3.10 The outcome of the QC meeting and the action that was required was discussed and agreed on at a fourth joint Workgroup meeting on 26<sup>th</sup> January 2011. During the meeting a number of solutions to the issues highlighted by the QC were discussed. It was agreed by the group that CAP190 could not continue as it currently stands and in order to progress it, a change would be required either to the SI or to the CUSC/Transmission Licence to remove the ambiguity regarding the term 'recommendation' referred to in the SI. The group agreed that the most logical step and preferred option was to seek a change to the SI.
- 3.11 The Proposer of CAP190 advised that they did not wish to withdraw CAP190 at this stage, and it was agreed to propose to the CUSC Modifications Panel to put the CAP190 Workgroup on hold for three months to allow time to contact DECC and establish more information on the possibility of changing the SI. It was agreed that the BSC equivalent, P264 would continue as a separate Workgroup as the QC did not raise a specific issue with it that would render it unable to proceed.

## **Post QC Legal Advice discussions**

- 3.12 At the CUSC Modifications Panel on 28<sup>th</sup> January 2011, approval was sought to put CAP190 on hold for three months. The Panel expressed concern regarding a lack of clarity regarding the process and time required for changing an SI and agreed that a one month delay would be appropriate.
- 3.13 Final Legal Advice from the QC was received on 7<sup>th</sup> February 2011 which reiterated the draft advice and discussions that had been held in the meeting. This Advice can be found in Annex 3 of Volume 2.
- 3.14 Further to CAP190 being put on hold, the Workgroup compiled a letter to send to DECC illustrating the issues that had been raised as part of CAP190. The letter was sent on 21<sup>st</sup> February 2011 and is contained in Annex 4 of Volume 2. A further one month extension was agreed at the February CUSC Panel to allow time for a response to be received from DECC. A response was received on 16<sup>th</sup> March 2011 which advised that other routes need to be considered to find a solution to the issue as opposed to a change to the SI as DECC were not in a position to be able to change the SI at this time. This letter is contained within Annex 5 of Volume 2.
- 3.15 The Workgroup held a teleconference on 24 March 2011 and agreed to pursue the other option in order to attempt to rectify the ambiguity caused by the SI. As a result CMP196 was raised by National Grid Electricity Transmission (NGET) and presented to the CUSC Panel on 25 March 2011. CMP196 proposed to replace all references to the term “recommendation” in the CUSC Modification Report other than that which refers to the recommendation of the CUSC Modifications Panel to ensure that existing rights of appeal are maintained.<sup>1</sup> The Workgroup agreed that CMP196 would not necessarily prevent CAP190 from progressing at a later stage.
- 3.16 As a result of the raising of CMP196, the CUSC Panel agreed to put CAP190 on hold until July 2011 to allow time for CMP196 to be progressed. On 20<sup>th</sup> July 2011 the Authority published rejection letters for both the like-for-like UNC and BSC proposals. In light of the decision letters, the CUSC Modifications Panel agreed by majority at its meeting on 29 July 2011 that the timetable for the CAP190 Workgroup should not be extended and that the Workgroup should provide its report to the next Panel meeting.
- 3.17 The Code Administrator advised the Proposer of the Panel’s decision and the Proposer decided not to withdraw CAP190 and instead keep open the route to proceed to Code Administrator Consultation in order for the industry to comment on the Proposal and for the Authority to make a determination in due course.

## **Potential Workgroup Alternative CUSC Modification**

- 3.18 At the first Workgroup meeting on 23<sup>rd</sup> September 2010, the Workgroup discussed three potential Workgroup Alternative CUSC Modifications:
- (i) All CUSC Modification Proposals would be subject to a two-thirds majority Panel Recommendation Vote;

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<sup>1</sup> The CUSC Modification Proposal Form for CMP196 can be found at <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/currentamendmentproposals/>

- (ii) All CUSC Modification Proposals would be subject to a two-thirds majority Panel Recommendation Vote, with the exception of Self-governance Modification Proposals;
- (iii) Identical to CAP190 except that it excludes Modification Proposals that have been suspended or subsumed during an SCR phase.

3.19 Due to the Panel decision not to extend the Workgroup timetable beyond July 2011, no Workgroup Consultation for CAP190 has taken place and therefore no Workgroup Alternative CUSC Modifications were pursued further.

## 4 Impact, Costs and Assessment

### Impact on the CUSC

4.1 The Code Administrator considers that CAP190 would require amendments to the following parts of the CUSC:

- Section 8: CUSC Modification
- Section 11: Interpretation and Definitions

No legal text was produced during the CAP190 Workgroup process. In line with the provisions of paragraph 8.22.11 of the CUSC, where National Grid proposes to recommend to the Authority that a CUSC Modification Proposal should not be made, the decision on whether legal text should be produced lies with the Authority. National Grid made the Authority representative aware of its intention not to produce legal text during the August 2011 CUSC Modifications Panel meeting. The Authority representative did not instruct National Grid to produce legal text.

### Impact on Greenhouse Gas Emissions

4.2 Neither the Proposer nor the Workgroup identified any material impact on Greenhouse Gas emissions.

### Impact on Core Industry Documents

4.3 Neither the Proposer nor the Workgroup identified any impacts on Core Industry Documents.

### Impact on other Industry Documents

4.4 Neither the Proposer nor the Workgroup identified any impacts on Other Industry Documents.

### Costs

Code administration costs	
Resource costs	<b>£9,075</b> - 5 Workgroup meetings <b>£83.20</b> - Catering <b>£3975</b> – QC Costs
Total Code Administrator costs	<b>£13,133.20</b>

### Industry costs (Standard CMP)

Resource costs	<p><b>£27,225</b> - 5 Workgroup meetings  <b>£ 2,723</b> – 1 Consultation</p> <ul style="list-style-type: none"> <li>• 5 Workgroup meetings</li> <li>• 6 Workgroup members</li> <li>• 1.5 man days effort per meeting</li> <li>• 1.5 man days effort per consultation response</li> <li>• 3 consultation respondents</li> </ul>
Total Industry Costs	<b>£29,948</b>

## Assessment against the Applicable CUSC Objectives

4.5 Given the circumstances of CAP190 and the Panel decision not to extend the Workgroup timetable, the CAP190 Workgroup has not carried out an assessment against the Applicable CUSC Objectives.

4.6 The Proposer believes that CAP190 would better facilitate both Applicable CUSC objectives, as summarised under each objective below.

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

*The change suggested by this Proposal is a minor alteration to the working practice of the CUSC Panel which would address the concerns raised at the Competition Commission, in the Code Governance Review and recognised by Ofgem in their Final Proposals. It is efficient for the licensee to meet the spirit of the regime as well as the letter of the licence conditions imposed under the Governance review. In the longer term the efficiency of the market will be helped if a more robust regulatory regime is developed. This solution is also in line with that put forward under the BSC and UNC, which will help to ensure consistency across the industry codes.*

- (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.

*This Amendment Proposal will ensure that Panel recommendations on potentially contentious Amendment Proposals resulting from Licence changes, SCR directions or other Authority requests and obligations are subject to an appropriate level of support from the expert Panel Members, and that Parties' rights to appeal Authority decisions regarding such Proposals are protected. The support of the CUSC signatories is vital if the contract is to develop in such a way as to encourage new entrants to the market.*

## 5 Proposed Implementation

- 5.1 Given the circumstances of CAP190, the Workgroup has not discussed a proposed implementation date for CAP190. Implementation would therefore default to the CUSC standard of 10 working days after an Authority decision. The Workgroup have also not discussed how CAP190 might be implemented, with regard to whether it would apply to CUSC Modifications already in progress at the CAP190 implementation date or only to new Modification Proposals raised after the CAP190 implementation date.
- 5.2 All respondents to the Code Administrator Consultation supported the 10 working day implementation approach but had differing views on the effect of implementation on other Modification Proposals. More information on these views can be found in Section 7.

### Workgroup Conclusions

- 6.1 In light of the CAP190 Workgroup timetable not being extended following industry developments relating to equivalent industry code modification proposals, the Workgroup has not reached a conclusion on the implementation of CAP190.

### National Grid Opinion

- 6.2 National Grid notes that CAP190 has not been fully developed and for clarity this view is based on discussions and analysis undertaken by the Workgroup to date.
- 6.3 National Grid agrees with the principle that existing rights of appeal should be maintained and raised CMP196 where it became apparent that those rights of appeal may be unclear due to an unintended consequence of the wording of the relevant Statutory Instrument. However, National Grid does not agree with the Proposer's arguments for implementation of CAP190 against the Applicable CUSC Objectives.
- 6.4 Under objective (a), the Proposer argues that *"In the longer term the efficiency of the market will be helped if a more robust regulatory regime is developed"*. National Grid does not agree that the solution proposed under CAP190 necessarily represents a more robust regime. The two-thirds majority recommendation required under CAP190 represents a very minor change from the existing voting mechanism. For each of the scenarios set out in the table in paragraph 2.2, there is only a one vote difference between the existing CUSC requirement to achieve a majority and the requirement proposed under CAP190.
- 6.5 The Proposer also notes that the CAP190 solution is in line with that put forward under the BSC and UNC, which would help to ensure consistency across the industry codes. Given that both the BSC and UNC Modification proposals have now been rejected by the Authority, if CAP190 were to be implemented, the cross-code consistency would not be achieved.
- 6.6 Furthermore, National Grid believes that the potential breadth of application of CAP190 would not better facilitate Applicable CUSC Objective (a) with regard to establishing and operating efficient CUSC modification procedures. National Grid considers that in most cases it would be difficult for Panel Members to make a judgement on whether there had been a verbal request, direction or instruction or whether there had been "compulsion" or "coercion", as suggested by the Workgroup in paragraph 3.2 above.
- 6.7 Under objective (b), the Proposer notes that CAP190 *"will ensure that Panel recommendations on potentially contentious Amendment Proposals resulting from Licence changes, SCR directions or other Authority requests and obligations are subject to an appropriate level of support from the expert Panel Members"*. As noted above, there is only a marginal difference between the existing Panel voting process to achieve a majority recommendation and that proposed by CAP190.
- 6.8 The Proposer also notes that CAP190 will *ensure that Parties' rights to appeal Authority decisions regarding such Proposals are protected*. With only a one vote difference between the existing voting mechanism and that

proposed by CAP190, National Grid is not convinced that implementation of CAP190 would ensure that parties' rights to appeal Authority decisions are protected. It is simply a slightly higher voting threshold than currently exists within the code.

## CUSC Modifications Panel Recommendation

6.9 At the meeting of the CUSC Modifications Panel on 28 October 2011, the Panel voted by a 6 to 2 majority that CAP190 better facilitates Applicable CUSC Objective (b).

6.10 The table below shows a breakdown of Panel members voting against the Applicable CUSC Objectives and the rationale for such votes.

<b>Panel Member</b>	<b>Better facilitates Applicable Objective (a)?</b>	<b>Better facilitates Applicable Objective (b)?</b>
Bob Brown	No. no improvement on the baseline.	No. Only a marginal change in terms of the one vote difference so does not improve the baseline.
Barbara Vest	Neutral.	Yes, provides for an appropriate check and balance.
Barbara Vest for Simon Lord	Neutral.	Yes, provides for an appropriate check and balance.
Paul Mott	Neutral.	Yes, do not accept code consistency argument and important to have checks and balances.
Paul Jones	Neutral.	Yes, a necessary check and balance and assists right to appeal.
Garth Graham	Neutral.	Yes due to the issue of Ofgem acting as Judge, Jury and Executioner. Parties need certainty, the right of appeal will be more likely so therefore it facilitates competition. Also provides comfort that there is an appropriate check and balance.
Ian Pashley	No, causes cross code inconsistency.	No, only a minor change from existing regime and CMP196 raised to deal with ambiguities.
Fiona Navesey	Yes, it terms of transparency.	Yes as it improves the likelihood of appeal.

## 7 Responses

7.1 Three responses were received to the Code Administrator Consultation. All were supportive of CAP190 and are summarised in more detail below. Copies of the representations are contained within Annex 9 of Volume 2.

Reference	Company	Supportive	Comments
CAP190-CR-01	E.ON UK	Yes	<ul style="list-style-type: none"> <li>• Better facilitates ACO (a) in that checks and balances are introduced.</li> <li>• Better facilitates ACO (b) in that a higher threshold for voting is required giving confidence to parties. Also new entrants may be deterred by a major contentious change being introduced without the possibility of an appeal.</li> <li>• Standard 10 day implementation is appropriate. Would support retrospective application to all SCR – directed modifications</li> </ul>
CAP190-CR-02	Scottish Power	Yes	<ul style="list-style-type: none"> <li>• Better facilitates ACO (a) in that the process is transparent and by setting a higher standard the likelihood of appeal is reduced, enhancing efficiency.</li> <li>• Better facilitates ACO (b) particularly for smaller parties by reinforcing the right of appeal.</li> <li>• Immediate implementation can be achieved and should relate to modifications already raised but not yet voted on.</li> </ul>
CAP190-CR-03	EDF Energy	Yes	<ul style="list-style-type: none"> <li>• Better meets the ACOs compared to the baseline.</li> <li>• Could potentially better facilitate ACO (b) as it would deliver enhanced checks and balances within the governance process in respect of modifications resulting from an Authority direction.</li> <li>• Default implementation of 10 days is appropriate and believe it should only apply to modifications raised after the implementation date.</li> </ul>