

Stage 06: Final CUSC Modification Report

Connection and Use of System Code
(CUSC)

CMP197 Amendment to Qualifying Guarantor

This proposal seeks to modify the CUSC to allow Companies who do not meet the current Approved Credit Rating criteria to provide Qualifying Guarantees

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

This document contains the discussions and conclusions of the Workgroup which formed in May 2011.

Published on: 10 November 2011



CUSC Modifications Panel Recommendation:

The implementation of CMP197 as it better facilitates Applicable CUSC Objective (b)



High Impact:

None



Medium Impact:

National Grid Transmission Plc, Industry Parties



Low Impact:

None

Contents



1	Summary	3
2	Why Change?.....	4
3	Solution	6
4	Summary of Workgroup Discussions.....	7
5	Impacts	11
6	Proposed Implementation.....	12
7	Conclusions and Recommendation.....	12
8	Responses	15
	Annex 1 - Proposed Legal Text	18
	Annex 2 - Workgroup Terms of Reference	20
	Annex 3 - CMP197 Proposal Form.....	25
	Annex 4 - Workgroup Attendance Register.....	29
	Annex 5 – Workgroup Consultation Responses.....	30
	Annex 6 – Code Administrator Consultation Responses	

Any Questions?

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About this document

This document is the Final CUSC Modification Report which contains the responses to the Code Administrator Consultation and the recommendation of the CUSC Modifications Panel. This document has been prepared and issued by National Grid under the rules and procedures specified in the CUSC. The purpose of this document is to assist the Authority in their decision whether to implement CMP197.

Document Control

Version	Date	Author	Change Reference
0.1	05 October 2011	National Grid	Publication to Industry
0.2	20 October 2011	National Grid	Draft for Panel vote
0.3	01 November 2011	National Grid	Draft for Panel review
1.0	10 November 2011	National Grid	Final version to the Authority

1 Summary

- 1.1 This document summarises the deliberations of the Workgroup and describes the CMP197 Modification Proposal.
- 1.2 CMP197 was proposed by Opus Energy and submitted to the CUSC Modifications Panel for their consideration on 06 May 2011. The Panel determined that the proposal should be considered by a Workgroup and that they should report back to the CUSC Modifications Panel following a period for the Workgroup Consultation.
- 1.3 The current wording in the CUSC means that only entities that are offered credit under an Approved Credit Rating are entitled to provide a Qualifying Guarantee, whereas entities that are offered credit under other methods (e.g. Independent Credit Assessments) are not. This may hinder the ability of a smaller supplier (i.e. an entity without an Approved Credit Rating) to set up corporate structures which require Guarantees between group entities and therefore may place restrictions on them that may not be felt by larger entities. This modification aims to allow entities who do not hold an Approved Credit Rating to provide Qualifying Guarantees under an Independent Credit Assessment.
- 1.4 The first Workgroup met on 24 May 2011 to progress through the Terms of Reference and the second Workgroup met on 09 June 2011 to further clarify questions raised at the first meeting. A copy of the Terms of Reference has been provided in Annex 2 of this document. A Workgroup consultation was published on 23 June 2011 to which 4 responses were received. These can be found in Annex 5 of this document. A post consultation Workgroup meeting was held on 25 July 2011 to discuss the responses. No alternatives were raised by the respondents or the Workgroup.

Workgroup Conclusions

- 1.5 On 25 July 2011 the Workgroup carried out their vote on CMP197. The Workgroup voted with a 4 to 1 majority that CMP197 better facilitated the Applicable CUSC Objectives than the baseline and should be implemented. Full details of the voting can be found in Section 7 of this Report.

National Grid's Opinion

- 1.6 National Grid supports the implementation of CMP197 on the basis that it better facilitates Applicable CUSC Objective (b) by helping smaller market participants and therefore will better facilitate competition.

CUSC Modifications Panel Recommendation

- 1.7 At the CUSC Modifications Panel meeting on 28 October 2011, a majority of 7 to 1 Members voted that CMP197 better facilitates the Applicable CUSC Objectives and so should be implemented.

2 Why Change?

- 2.1 Users who pay Balancing Services Use of System (BSUoS) Charges or Transmission Network Use of System Demand Charges have to provide Security cover in accordance with 3.21 of the CUSC. The amount that each User has to cover under these arrangements is called its Security Requirement and is equal to around 4 weeks' worth of any BSUoS charges owing and a proportion of the forecast annual TNUoS Demand Charges for the relevant User.
- 2.2 Each User has a certain level of free credit called Allowed Credit allocated to it according to how creditworthy it is deemed under 3.26 and Appendix 1 of section 3 of the CUSC. The maximum amount of Allowed Credit a User can receive is 2% of National Grid's forecast Regulatory Asset Value (RAV).
- 2.3 There are three ways that a User can achieve Allowed Credit:
 - By holding an Approved Credit Rating (between 0.3% and 2% of RAV) or
 - If it does not hold an Approved Credit Rating, by undertaking an Independent Credit Assessment by an agency approved by National Grid (between 0.067% and 0.4% of RAV) or
 - If it does not hold an Approved Credit Rating, from credit calculated based on its past payment history (between 0.008% and 0.04% of RAV). This option is intended for new parties who may not have had the opportunity to build up sufficient "credit history" to use the other options.
- 2.4 If the User's Allowed Credit covers its Security Requirement, then no further action is required. However, more commonly some form of Security Cover is required to make up the difference. This can be provided in a number of ways as outlined in 3.21.3 of the CUSC, including cash in an ESCROW account or by providing a Letter of Credit. Another acceptable form of security is a financial guarantee from another company (a Qualifying Guarantee).
- 2.5 Currently, the CUSC only allows financial Guarantees to be provided by Companies who meet the current Approved Credit Rating which is currently defined by the following criteria:
 - A long term debt rating of not less than BB- by Standard and Poor's Corporation or
 - A rating of not less than Ba3 by Moody's Investor Services or
 - An equivalent rating from any other reputable credit agency approved by the Company
- 2.6 A financial Guarantee can be provided by a CUSC party or another party as long as it meets the requirements set out in the CUSC. The level of cover that a company can provide to a User is calculated in the same manner that its Allowed Credit would be calculated if it were a User.
- 2.7 The definition of a Qualifying Guarantee is as follows:

*a guarantee in favour of **The Company** in a form proposed by the **User** and agreed by **The Company** (whose agreement shall not be unreasonably withheld or delayed) and which is provided by an entity which holds an **Approved Credit Rating** provided that such guarantee cannot secure a sum*

*greater than the level of **User's Allowed Credit** that would be available to that entity in accordance with Paragraph 3.26 if it was a User;*

- 2.8 The current wording in the CUSC means that only entities that hold an Approved Credit Rating are entitled to provide a Qualifying Guarantee, whereas entities that would be offered credit under other methods if they were a User (e.g. Independent Credit Assessments) are not.
- 2.9 Historically, only larger organisations have been able to obtain a credit rating which would then allow them to provide a Qualifying Guarantee to a third party. This limits the number of parties who can provide such guarantees, which restricts Users, especially smaller industry parties, in the way that they are able to provide Security Cover.



- 3.1 This proposal aims to allow companies who do not meet the current Approved Credit Rating criteria (i.e. BB- or greater of Standard & Poor etc) to provide Qualifying Guarantees to another party. This can be achieved by allowing Independent Credit Assessments to be used to assess the creditworthiness of a prospective Guarantor. The key principle is that the Guarantor would not be required to meet the Company “Approved Credit Rating” but under an Independent Credit Assessment they could be assessed as being creditworthy and be afforded a level of credit that could be used to provide a guarantee of a certain value to a User. This value would be calculated under the assessment and would take into account other Guarantees that the entity was providing.
- 3.2 An entity may split its allowed credit between itself and any parties it chooses to guarantee. For example, an entity that is also a User that qualifies for 17% allowed credit under the Independent Credit Assessment method could use 10% of that to cover its own requirement and up to 7% to provide a guarantee to another party.
- 3.3 The proposer’s initial view is that the wording of the definition of Qualifying Guarantee under Section 11 - Interpretation and Definitions can be changed in order to solve this defect. This will allow all entities to provide Guarantees based on the credit allowance that would be afforded to them under the current criteria in Section 3.26 of the CUSC.
- 3.4 The proposer has also clarified that sum of all Guarantees offered by a party should not be allowed to exceed the total credit that they are able to provide a guarantee for. For example, if the Guarantor’s credit allowance is £10,000 and they have provided a guarantee to three Users, the total aggregate of the three separate Guarantees cannot exceed £10,000. This modification will not have an adverse affect on National Grid’s risk levels. The provision that the Guarantor can only provide cover up to the level that it would be afforded in itself will protect against Guarantors being over stretched.

Independent Credit Assessment

This is an assessment of the creditworthiness of a User which is carried out by a National Grid approved agency.

Such assessment is provided at National Grid’s cost, however if a User requests an Independent Credit Assessment within a 12 month period after the first assessment was conducted, the cost is borne by the User.

4 Summary of Workgroup Discussions

Presentation of Proposal

4.1 The proposer presented their proposal to the first Workgroup meeting on 24 May 2011 and explained the defect which the proposal addressed. The National Grid Representative also provided a presentation to the Workgroup which explained the current credit arrangements as set out in the CUSC. The Workgroup carried out the items within the Terms of Reference as set out below:

a) **What would happen if a Guarantor failed? Consider the situation where the Guarantor alone fails and where both Guarantor and a Counterparty covered by the relevant guarantee fail.**

4.2 The National Grid Representative stated that the standard process is already set out in the CUSC for such situations, whereby the User would have to provide replacement security within 48 hours of the credit of their Guarantor “failing”. This is in accordance with paragraph 3.21.3 of the CUSC. The Workgroup debated whether the onus was on the Guarantor or the Counterparty to provide the notice to National Grid that the company had failed. The National Grid representative stated that the general onus would be on the Counterparty to provide the notice as they would be the party contracted with National Grid. However, traditionally, as guaranteeing companies are generally large, a change in their credit rating is normally flagged up. A Workgroup member noted that a Guarantor and a Counterparty would have their own internal business relationships therefore any change in the Guarantor’s credit rating should be flagged up to the Counterparty, by the Guarantor as part of their bilateral arrangements. The Workgroup were satisfied that the current process of the onus being on the User to provide information to National Grid should remain.

b) **How would the level of cover that the Guarantor can provide to a particular party, or parties, be calculated?**

4.3 The National Grid representative stated that the working practice was for the Guarantor to manage how it allocated their credit to a party or parties. National Grid would only monitor their credit limit to ensure that the counterparties did not exceed the level of cover that the Guarantor could provide. One Workgroup member asked whether a Counterparty could take priority over another depending on when a guarantee had been submitted.

4.4 At the second Workgroup meeting on 09 June 2011 the National Grid representative stated that there was not a concept of a priority list as it would be up to the Guarantor to manage their counterparties. Where a User’s security requirement exceeded the Guarantor’s allocated credit, the User would be notified. The Workgroup debated whether there should be a requirement for the Guarantor to provide a priority list to National Grid. This would provide clarity in situations where the credit allocation to the Guarantor had reduced which would impact their counterparties. By having a priority list, National Grid would be able to allocate any reductions to Users as per the instructions from the Guarantor. However, it could lead to an administrative burden on both National Grid and the Guarantor as they would have to keep such priority lists updated. In addition, if the Guarantor

was not a CUSC Party, then they may not have to abide by the requirements to provide a priority list.

4.5 An alternative suggestion by a Workgroup Member was to have a “last in first out” policy whereby the last User to have a guarantee provided by the Guarantor would automatically have their allocation reduced. However, this could prove to be discriminatory towards particular Users and could prejudice how the arrangements between the Guarantor and the Users it provides Guarantees to would work in these circumstances. The majority Workgroup view was that if a Guarantor’s credit allowance reduced, each Users’ credit allowance should also be reduced on a pro rata basis to prevent any such discrimination. This would also be easier to administer than a priority list. The Workgroup noted that each User would have to be notified by National Grid when a pro rata reduction was to occur.

c) **Clarify where a Guarantor’s credit allowance decreases, how it would impact cover on the counterparties which are dependent on the Guarantor.**

4.6 The Workgroup agreed that this point had been covered under item (a) whereby the onus would be on the User to provide National Grid with the information and to also provide an alternative form of security. The Workgroup also agreed that the credit allowance for each dependent User would be reduced equally on a pro rata basis. The National Grid representative stated that all companies who provide Guarantees are generally monitored on a continual basis to ensure National Grid’s risk levels are not compromised.

4.7 One Workgroup member stated that an issue could arise whereby the reduction of a Guarantor’s credit allowance could adversely affect a User, as under the rules of the CUSC they would only have 48 hours in order to provide sufficient security. This raised the question of whether the User could claim that the Guarantor had acted anti-competitively by putting it in this position. The Workgroup noted that this issue was outside of the scope of the proposal but agreed that it should be referenced with this consultation document as an issue that parties might wish to be aware of. (See paragraph 4.12).

d) **Discuss the impact on a Counterparty if the Guarantor withdraws their guarantee (or transfers it to another Counterparty) and consider a process to be followed for the Guarantor and National Grid to do so**

4.8 The Workgroup agreed that this point was covered under point (a) and (b) whereby the User would have to provide an alternative form of security within 48 hours. The Workgroup also discussed whether there should be a cap for Guarantors. This would mean that where an entity provides a guarantee for more than one User, the aggregate value of all its Guarantees could not exceed the maximum credit that the entity could obtain itself in line with their credit allowance.

4.9 The National Grid representative stated that the DCUSA does have a cap whereby the aggregate total of all Guarantees cannot exceed their total credit allowance, as provided under Schedule 1, paragraph 2.20 of the DCUSA. Conversely, the UNC does not have a cap. At the Workgroup meeting on 9 June 2011, the Workgroup believed that a cap should be imposed as it would reduce the risk to National Grid, and potential of cost pass through to the electricity industry, associated with a Guarantor over stretching itself and providing too many Guarantees. This would also

provide alignment with the DCUSA. The Workgroup believed that this issue should be covered as a formal consultation question:

4.10 **Do you believe that a cap should be imposed whereby the aggregate total of all Guarantees provided to other Users cannot exceed the total credit allowance for a Guarantor, less their own requirements?**

4.11 At the post consultation Workgroup meeting on 25 July 2011, it was noted that all four consultation responses believed that a cap should be imposed for the reasons outlined by the Workgroup. The Workgroup therefore agreed that the cap would form part of the original CMP197 modification. However, the consultation response from EDF was that there should not be a cap on those guarantors who already had an Approved Credit Rating due to them being more robust than those guarantors with a credit allowance defined by an Independent Credit Assessment. The National Grid representative stated that if such a cap was in place it would not affect any of the current guarantors with an Approved Credit Rating. Furthermore, historically, no party had exceeded the cap meaning the current guarantors would not be affected in any case. The Workgroup unanimously agreed that the cap should remain within CMP197 as it would reduce the risk to National Grid and the electricity industry.

4.12 A Workgroup member noted that if a Guarantor withdrew their guarantee this could force the Counterparty, in extremis, out of the market due to their inability to provide security. In this situation a question might arise as to the legality of the Guarantor's withdrawal of their guarantee under the provisions of the competition law. The Workgroup noted these comments and agreed these should be highlighted in the report however this was not a matter for CMP197. It is up to the Guarantor and the Counterparty to ensure the legality of any actions they take.

(e) **Take into account related credit developments within other codes including the Distribution Connection and Use of System Agreement and the Uniform Network Code to ensure that industry-wide best practice is maintained**

- 4.13 The National Grid representative stated that both the DCUSA and UNC allowed Independent Credit Assessments for the provision of a Company Guarantee. The Workgroup also discussed whether payment history could be used to provide a Guarantee to another User. As mentioned in section 2 above, a User can accrue a credit rating based on their payment history. Under the CUSC and DCUSA, the payment history (or payment record factor) would increase each month depending on the payments made but the allowance would only be accrued up to a maximum of 5 years after which it would remain at that value. Under the UNC, the payment history could only accrue up to 2 years after which their credit allowance would decrease to zero and an alternative form of security would be required.
- 4.14 The Workgroup believed that payment history should not be allowed for entities to provide Qualifying Guarantees as it increased the risk to National Grid and to the industry as any costs could potentially be passed through. The view point of the Workgroup was that the payment history provisions were there to specifically assist Users with no credit rating and very little history to base an assessment on, with at least some level of Allowed Credit. It was felt that this was not a suitable method for assessing a potential Guarantor's credit worthiness. This also aligns with the DCUSA and the UNC as both codes do not allow payment history to be used to provide a Qualifying Guarantee. Nevertheless, the Workgroup felt that this issue should be covered by a consultation question.
- 4.15 **Do you believe that payment history should be allowed for the provision of a Qualifying Guarantee?**
- 4.16 At the post consultation Workgroup meeting on 25 July 2011, it was noted that all four consultation responses believed that payment history should not be allowed for the provision of a Qualifying Guarantee. The reason was that this would increase the risk to National Grid and to the industry as discussed by the Workgroup.
- 4.17 In comparison with other codes, the BSC also does not allow any Qualifying Guarantee as they only accept letters of credit or cash. The reason is understood to be that Elexon administers the BSC and is a non profit organisation. Therefore, their risk levels would be increased if they allowed any form of Qualifying Guarantee.

Workgroup Alternative CUSC Modifications

- 4.18 The Workgroup did not propose any Workgroup Alternative CUSC Modifications to the original proposal at any of the Workgroup meetings. There were also no Workgroup Alternative CUSC Modification Requests from the respondents.

5 Impacts and Costs

Impact on the CUSC

- 5.1 CMP197 requires amendments to the following parts of the CUSC:
- Section 11 – Interpretation and Definitions
 - Section 3 – Use of System
- 5.2 The text required to give effect to the Original Proposal is contained in Annex 1 of this document.

Impact on Greenhouse Gas Emissions

- 5.3 Neither the proposer nor the Workgroup identified any material impact on Greenhouse Gas emissions.

Impact on Core Industry Documents

- 5.4 Neither the proposer nor the Workgroup identified any impacts on Core Industry Documents.

Impact on other Industry Documents

- 5.5 Neither the proposer nor the Workgroup identified any impacts on other Industry Documents.

Costs

Industry costs (Standard CMP)	
Resource costs	£13,613 - 3 Workgroup meetings £ 5,445 – 2 Consultations <ul style="list-style-type: none">• 5 Workgroup members• 1.5 man days effort per meeting• 1.5 man days effort per consultation response• £605 charge out rate per day• 3 consultation respondents
Total Industry Costs	£19,058

6 Proposed Implementation

- 6.1 The Workgroup propose that CMP197 should be implemented 10 Working Days after an Authority Decision.
- 6.2 One respondent to the Workgroup Consultation did not support the Modification; all other respondents to the Workgroup Consultation supported this implementation approach.

7 Conclusions and Recommendation

Workgroup Conclusion

- 7.1 The Workgroup believes the Terms of Reference have been fulfilled and CMP197 has been fully considered. On 25 July 2011 the Workgroup voted on CMP197. The Workgroup voted with a 4 to 1 majority that CMP197 better facilitated the Applicable CUSC Objectives than the baseline and should be implemented.
- 7.2 For reference the 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.
- 7.3 The proposer believes that this proposal would better facilitate Applicable CUSC Objective (b). By allowing entities to use Independent Credit Assessments to achieve a level of credit that could be used to provide a guarantee of a certain value to another User, it would place smaller suppliers on a more even footing with larger suppliers. This would facilitate effective competition as it would reduce a potential perceived barrier to providing financial Guarantees.

National Grid Opinion

- 7.4 National Grid supports the implementation of CMP197 on the basis that it better facilitates Applicable CUSC Objective (b) by helping smaller market participants and therefore will better facilitate competition.

Vote 1

- 7.5 **Does CMP197 better facilitate the Applicable CUSC Objectives compared with the baseline?**

Objective	(a)	(b)
Paul Mott	No. Independent Credit Assessments only provide ratings upon request rather than	No. Reasons as set out for (a).

	continually review each User because they do not have the resource to track all parties. Therefore this increases the risk to other parties if the User defaults.	
Andy Clay	Neutral.	Yes. It may marginally increase the risk to other parties but it does help smaller participants which will better facilitate competition.
Esther Sutton	Neutral.	Yes. Have concerns that it may increase risk to other parties but in the interests of helping smaller parties, it will better facilitate competition.
Phil Hayward	Neutral.	Yes. It will help smaller parties and better facilitate competition.
Garth Graham	Neutral.	Yes. It will help smaller parties and better facilitate competition.

CUSC Modifications Panel Recommendation

7.6 At the CUSC Modifications Panel meeting on 28 October 2011, a majority of 7 to 1 Members voted that CMP197 better facilitates the Applicable CUSC Objectives and so should be implemented. The details of the voting can be found in the table below:

Panel Member	Better facilitates Applicable Objective (a)?	Better facilitates Applicable Objective (b)?
Bob Brown	Yes.	Yes, more likely to benefit smaller and new parties and strikes the right balance between ensuring robust credit arrangements and risk of default from parties.
Barbara Vest	Neutral.	Yes, supports small and new parties.
Barbara Vest for Simon Lord	Neutral.	Yes, supports small and new parties.
Paul Mott	Neutral.	No, there are concerns that independent credit assessments are not as robust as the larger credit rating agencies; therefore it increases the risk to the rest of the industry so this marginally

		outweighs the benefit.
Paul Jones	Neutral.	Yes, risk is very small and benefit to parties overrides this. The cap on the total aggregate amount of guarantees a party can provide will also lower the risk to other parties in the event of the guarantor defaulting.
Garth Graham	Neutral.	Yes, facilitates and supports new and small parties in terms of access to credit. Agree with Bob Brown's comments on providing a balance between robust credit arrangements and risk of default.
Ian Pashley	Neutral.	Yes, support smaller and new parties.
Fiona Navesey	Neutral.	Yes, although there is a slight increase in risk, overall it strikes the right balance.

Workgroup Consultation Responses

8.1 The following table provides an overview of the representations received.

No.	Respondent	Support	Better facilitates Applicable CUSC Objectives	Comments
1	Scottish and Southern Energy	Yes	Neutral under (a). Yes under (b)	<ul style="list-style-type: none"> • Believe that a cap should be imposed • Believe that payment history should not be allowed • If implemented, there may be merit in National Grid carrying out a post implementation review after a year • Note the potential competition law aspects in relation to a guarantee being withdrawn which may adversely affect the User.
2	EDF Energy	No	No under (a) and (b)	<ul style="list-style-type: none"> • Believe that a cap should be imposed • Believe that payment history should not be allowed • Increases financial exposure to other parties as there is more risk • Independent credit agencies may not be as robust as approved credit rating agencies as they do not continuously check the health of firms • Do not believe there should be a cap for those guarantors who have an approved credit rating.
3	E.ON	Yes	Yes under (b)	<ul style="list-style-type: none"> • Cautious support for

No.	Respondent	Support	Better facilitates Applicable CUSC Objectives	Comments
				<p>CMP197</p> <ul style="list-style-type: none"> • Need to maintain safeguards to reduce risk of costs being incurred by other parties • Believe that a cap should be imposed which is consistent with the DCUSA • Believe that payment history should not be allowed which is consistent with the DCUSA • Possible detriment under objective (b).
4	First Hydro Company	Yes	Yes under (b)	<ul style="list-style-type: none"> • Believe that a cap should be imposed • Believe that payment history should not be allowed • Independent Credit Assessments should be undertaken on a regular basis to take into account any change in creditworthiness of a User.

Code Administrator Consultation Responses

8.2 The table below provides an overview of the representations received to the Code Administrator Consultation.

No.	Respondent	Support	Better facilitates Applicable CUSC Objectives	Comments
1	EDF Energy	No	No under (b)	<ul style="list-style-type: none"> • Believe that independent credit reference agencies do not continuously check the financial health of firms for which they provide a rating • Guarantor may be

No.	Respondent	Support	Better facilitates Applicable CUSC Objectives	Comments
				<p>well rated despite poor financial health which can increase the risk to other parties if the guarantor failed</p> <ul style="list-style-type: none"> • Will increase the risk and cost of operating in the sector and so deter entry and participation • Concerns that it will be difficult to ensure that a counterparty will notify National Grid of a deterioration in a Guarantor's financial health.
2	EON UK	Yes	Yes under (b)	<ul style="list-style-type: none"> • May assist smaller parties in competing in the market by providing a more affordable way of providing credit • Recognise that it can also have a detrimental impact on (b) by making the credit arrangements less robust and increase risk to other users if the guarantor fails.

Section 11

“Qualifying Guarantee”

a guarantee in favour of **The Company** in a form proposed by the **User** and agreed by **The Company** (whose agreement shall not be unreasonably withheld or delayed) and which is provided by:

(i) an entity which holds an **Approved Credit Rating** provided that such guarantee cannot secure a sum greater than the level of **User’s Allowed Credit** that would be available to that entity in accordance with Paragraph 3.26.2 if it was a **User**; or

(ii) an entity with an **Independent Credit Assessment** provided that such guarantee cannot secure a sum greater than the level of **User’s Allowed Credit** that would be available to that entity in accordance with Paragraph 3.26.6 if it was a **User**; and

(iii) which in either case does not, when aggregated with all other **Qualifying Guarantees** provided by that entity, exceed (a) the level of **User’s Allowed Credit** that would be available to that entity in accordance with Paragraph 3.26 if it was a **User** or (b) if the entity is a **User** the level of **User’s Allowed Credit** available to it in accordance with Paragraph 3.26 less any amount relied on by the **User** in respect of its own requirements.

“Independent Credit Assessment”

an assessment of the creditworthiness of a **User or entity** by an **Approved Agency** as nominated by the **User or entity** obtained in accordance with Paragraph 3.26.7, 3.26.8 and 3.26.9;

Section 3

3.21.5 (c) subject to the entity issuing the **Qualifying Guarantee** continuing to have an **Approved Credit Rating or Credit Assessment Score** for an amount at least equal to the required **Security Amount** applicable to it (less its balance on the **Escrow Account**) provide **The Company** with confirmation from the issuing entity that the validity of the **Qualifying Guarantee** has been extended for a period of not less than 6 months on the same terms and otherwise for such amount as is required by this Part III; or

3.21.7(b) If the entity providing the **User’s Qualifying Guarantee** ceases to have an **Approved Credit Rating or Credit Assessment Score** for an amount at least equal to the required **Security Amount** (less the User’s balance on the **Escrow Account**) the **User** shall forthwith procure a replacement **Qualifying Guarantee** from an entity with such a credit rating or a **Letter of Credit** or a **Bilateral Insurance Policy** or an **Insurance Performance Bond** or an **Independent Security Arrangement** or transfer to **The Company** cash to be credited to the **Escrow Account**.

3.22.11(e) **The Company** becomes aware that any entity providing a **Qualifying Guarantee** or a **Bilateral Insurance Policy** or an **Insurance Performance Bond** or an **Independent Security Arrangement** in relation to that **User** which has not expired shall cease to meet the **Requirements** in the case of a **Bilateral Insurance Policy** or an **Insurance Performance Bond** or an **Independent Security Arrangement** or in the case of a **Qualifying Guarantee** cease to have an **Approved Credit Rating** or **Credit Assessment Score** for an amount at least equal to the required **Security Amount** (less its balance on the **Escrow Account**); or

TERMS OF REFERENCE FOR CMP197 WORKGROUP RESPONSIBILITIES

1. The Workgroup is responsible for assisting the CUSC Modifications Panel in the evaluation of CUSC Modification Proposal CMP197 Amendment to Qualifying Guarantor tabled by Opus Energy at the Modifications Panel meeting on 06 May 2011.
2. The proposal 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 Modification provisions, and generally reference should be made to the Transmission Licence for the full definition of the term.

SCOPE OF WORK

4. The Workgroup must consider the issues raised by the Modification Proposal and consider if the proposal identified better facilitates achievement of the Applicable CUSC Objectives.
5. In addition to the overriding requirement of paragraph 4, the Workgroup shall consider and report on the following specific issues:
 - a) What would happen if a Guarantor failed? Consider the situation where the Guarantor alone fails and where both Guarantor and a Counterparty covered by the relevant guarantee fail.
 - b) How would the level of cover that the Guarantor can provide to a particular party, or parties, be calculated?
 - c) Clarify where a Guarantor's credit allowance decreases, how it would impact cover on the counterparties which are dependent on the Guarantor.
 - d) [Related to this is a process for NG and the counterparties / guarantor where the guarantor chooses to change from guaranteeing Party A to Party B – need a process of 'transition'.]

Discuss the impact on a Counterparty if the Guarantor withdraws their guarantee (or transfers it to another Counterparty) and consider a process to be followed for the Guarantor and National Grid to do so

- e) Take into account related credit developments within other codes including the Distribution Connection and Use of System Agreement and the Uniform Network Code to ensure that industry-wide best practice is maintained
6. The Workgroup is responsible for the formulation and evaluation of any Workgroup Alternative CUSC Modifications (WACMs) arising from Group discussions which would, as compared with the Modification 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 Workgroup should become conversant with the definition of Workgroup Alternative CUSC Modification which appears in Section 11 (Interpretation and Definitions) of the CUSC. The definition entitles the Group and/or an individual member of the Workgroup to put forward a WACM if the member(s) genuinely believes the WACM would better facilitate the achievement of the Applicable CUSC Objectives, as compared with the Modification Proposal or the current version of the CUSC. The extent of the support for the Modification Proposal or any WACM arising from the Workgroup's discussions should be clearly described in the final Workgroup Report to the CUSC Modifications Panel.
 8. Workgroup members should be mindful of efficiency and propose the fewest number of WACMs possible.
 9. All proposed WACMs should include the Proposer(s)'s details within the final Workgroup report, for the avoidance of doubt this includes WACMs which are proposed by the entire Workgroup or subset of members.
 10. There is an obligation on the Workgroup to undertake a period of Consultation in accordance with CUSC 8.17. The Workgroup Consultation period shall be for a period of 15 Working Days as determined by the Modifications Panel.
 11. Following the Consultation period the Workgroup is required to consider all responses including any WG Consultation Alternative Requests. In undertaking an assessment of any WG Consultation Alternative Request, the Workgroup should consider whether it better facilitates the Applicable CUSC Objectives than the current version of the CUSC.

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

by the same organisation who submitted the WG Consultation Alternative Request.

12. The Workgroup is to submit its final report to the Modifications Panel Secretary on 18 August 2011 for circulation to Panel Members. The final report conclusions will be presented to the CUSC Modifications Panel meeting on 26 August 2011.

MEMBERSHIP

13. It is recommended that the Workgroup has the following members:

Role	Name	Representing
Chairman	Paul Jones	E.ON
National Grid Representative*	Andy Clay	National Grid
Industry Representatives*	Garth Graham	SSE
	Paul Mott	EDF
	Philip Hayward	Opus Energy
	Esther Sutton	E.ON
Authority Representative	Abid Sheikh	Ofgem
Technical Secretary	Steve Lam	National Grid
Observers		

NB: A Workgroup 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 Workgroup and the Modifications Panel Chairman must agree a number that will be quorum for each Workgroup meeting. The agreed figure for CMP197 is that at least 5 Workgroup members must participate in a meeting for quorum to be met.
15. A vote is to take place by all eligible Workgroup members on the Modification Proposal and each WACM. 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 Workgroup 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 WACMs exist, whether each WACM better facilitates the Applicable CUSC Objectives than the original Modification 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 Workgroup report in as much detail as practicable.

16. It is expected that Workgroup 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 Workgroup chairman at the earliest possible opportunity and certainly before the Workgroup vote takes place. Where abstention occurs, the reason should be recorded in the Workgroup report.
17. Workgroup members or their appointed alternate are required to attend a minimum of 50% of the Workgroup meetings to be eligible to participate in the Workgroup vote.
18. The Technical Secretary shall keep an Attendance Record for the Workgroup meetings and circulate the Attendance Record with the Action Notes after each meeting. This will be attached to the final Workgroup report.
19. The Workgroup membership can be amended from time to time by the CUSC Modifications Panel.

RELATIONSHIP WITH MODIFICATIONS PANEL

20. The Workgroup shall seek the views of the Modifications Panel before taking on any significant amount of work. In this event the Workgroup chairman should contact the Modifications Panel Secretary.
21. The Workgroup shall seek the Modifications Panel's advice if a significant issue is raised during the Consultation process which would require a second period of Consultation in accordance with 8.20.17 of the CUSC.
22. Where the Workgroup requires instruction, clarification or guidance from the Modifications Panel, particularly in relation to their Scope of Work, the Workgroup chairman should contact the Modifications Panel Secretary.

MEETINGS

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

8.2.1

8.2.2 REPORTING

24. The Workgroup chairman shall prepare a final report to the August 2011 Modifications Panel responding to the matters set out in the Terms of Reference, including all Workgroup Consultation Responses and Alternative Requests.
25. A draft Workgroup Report must be circulated to Workgroup members with not less than five Business Days given for comments, unless all Workgroup members agree to three Business Days.
26. Any unresolved comments within the Workgroup must be reflected in the final Workgroup Report.
27. The chairman (or another member nominated by him) will present the Workgroup report to the Modifications Panel as required.

Appendix 1: Indicative Workgroup Timeline

The following timetable is suggested for progressing the CMP197 Workgroup

Date	Task
06-May-11	Proposal raised
24-May-11	1st Workgroup meeting
09-Jun-11	2nd Workgroup meeting
15-Jun-11	Issue draft Workgroup consultation for Workgroup comment
22-Jun-11	Deadline for comments on draft Workgroup Consultation
23-Jun-11	Publish Workgroup consultation (for 3 weeks)
14-Jul-11	Deadline for responses to Workgroup consultation
25-Jul-11	Post consultation Workgroup meeting
28-Jul-11	Circulate draft Workgroup Report
04-Aug-11	Deadline for comment on draft Workgroup Report
18-Aug-11	Submit Workgroup Report to Panel Secretary
26-Aug-11	Present Workgroup Report to Panel

CUSC Modification Proposal Form	CMP197
<p>Title of the CUSC Modification Proposal: <i>(mandatory by Proposer)</i></p> <p>Amendment to Qualifying Guarantor</p>	
<p>Submission Date <i>(mandatory by Proposer)</i></p> <p>15th April 2011</p>	
<p>Description of the CUSC Modification Proposal <i>(mandatory by Proposer)</i></p> <p>Our proposal is to allow companies who do not meet the current Approved Credit Rating criteria (i.e. BB- or greater of Standard & Poor etc) to provide guarantees. Based on our reading of the CUSC document we should only need to change the wording of the definition of Qualifying Guarantee under Section 11 - Interpretation and Definitions in order to effect this change. This will allow all entities to provide guarantees based on the credit that would be afforded to them under the current criteria in Section 3.26 of the CUSC.</p> <p>For example, an entity that qualifies for 17% allowed credit under the Independent Credit Assessment method could use 10% of that to cover its own requirement and up to 7% to provide a guarantee to another party.</p>	
<p>Description of Issue or Defect that CUSC Modification Proposal seeks to Address: <i>(mandatory by Proposer)</i></p> <p>Entities that are offered credit under an Approved Credit Rating are entitled to provide a Qualifying Guarantee, whereas entities that are offered credit under other methods (e.g. Independent Credit Assessments) are not. This is discriminatory towards smaller suppliers who are typically not large enough to establish an Approved Credit Rating and therefore often use other methods.</p> <p>This modification will not have an adverse affect on National Grid’s risk levels. The provision that the guarantor can only provide cover up to the level that it would be afforded in itself will still protect against non-creditworthy entities offering guarantees. Furthermore, it should be specified that if an entity offers multiple guarantees, then the sum of the value of these guarantees may not exceed the total amount of credit that the guaranteeing party is able to offer.</p> <p>This modification will bring the CUSC in line with other NWO provisions, as legislated by the DCUSA. Please see attached for the relevant sections of the DCUSA.</p>	

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

In **Section 11 - Interpretation and Definitions of the CUSC**, the following section to be amended as highlighted

"Qualifying Guarantee"

a guarantee in favour of **The Company** in a form proposed by the **User** and agreed by **The Company** (whose agreement shall not be unreasonably withheld or delayed) and which is provided by ~~an entity which holds an Approved Credit Rating~~ another entity provided that such guarantee cannot secure a sum greater than the level of **User's Allowed Credit** that would be available to that entity in accordance with Paragraph 3.26 if it was a User;

Also, wording will need to be introduced somewhere to make it clear that sum of all guarantees offered by a party making use of this would not be allowed to exceed the total credit that they are able to provide a guarantee for.

Do you believe the CUSC Modification Proposal will have a material impact on Greenhouse

Gas Emissions? Yes/No *(assessed in accordance with Authority Guidance – see guidance notes for website link)*

No

Impact on Core Industry Documentation. Please tick the relevant boxes and provide any supporting information *(this should be given where possible)*

No

BSC

Grid Code

STC

Other

(please specify)

Urgency Recommended: Yes / No (optional by Proposer)

No

Justification for Urgency Recommendation (mandatory by Proposer if recommending progression as an Urgent Modification Proposal)

Self-Governance Recommended: Yes / No (mandatory by Proposer)

No

Justification for Self-Governance Recommendation (Mandatory by Proposer if recommending progression as Self-governance Modification Proposal)

Should this CUSC Modification Proposal be considered exempt from any ongoing Significant Code Reviews? (Mandatory by Proposer in order to assist the Panel in deciding whether a Modification Proposal should undergo a SCR Suitability Assessment)

No

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

None envisaged

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

A similar modification to the Gas UNC: Modification 0360 - Removal of Credit Rating Restrictions from Definition of Parent Company is currently at Workgroup stage

Justification for CUSC Modification Proposal with Reference to Applicable CUSC Objectives: (mandatory by proposer)

Please tick the relevant boxes and provide justification:

(a) the efficient discharge by The Company of the obligations imposed upon it by the Act and the Transmission Licence

(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 proposal would better fulfil objective b). Allowing this method of credit cover would remove a clause which could restrict creditworthy small suppliers and force them to use more costly methods of credit cover. This change would therefore place smaller suppliers on a more even footing with larger suppliers and thereby increase fair competition.

These are defined within the National Grid Electricity Transmission plc Licence under Standard Condition C10, paragraph 1

Details of Proposer: (Organisation Name)	OPUS Energy Ltd
Capacity in which the CUSC Modification Proposal 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:	Philip Hayward Opus Energy Ltd 0845 4379406 Philip.hayward@opusenergy.com
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Louise Boland Opus Energy Ltd 0845 2937230 Louise.boland@opusenergy.com
Attachments (Yes/No): No If Yes, Title and No. of pages of each Attachment: Yes DCUSA Schedule 1 Extracts, 1 page	

Attachment

Schedule 1 of the DCUSA

Credit Allowance Where Credit Support is Provided by a Third Party

2.19 Where credit support is provided for the User through a Qualifying Guarantee by a third party (the Credit Support Provider), the maximum Credit Allowance assigned to the User shall be calculated in accordance with Paragraph 2.3, but substituting the Credit Support Provider for the User in all such calculations. Where the value of the Qualifying Guarantee is lower than the Credit Allowance calculated pursuant to Version 4.3 Schedule 1 250 2.3, the User's actual Credit Allowance shall be the maximum value of the Qualifying Guarantee.

2.20 Where a Credit Support Provider provides a Qualifying Guarantee for the User and for other users of the Company's Distribution System, the aggregate of all Qualifying Guarantees so offered shall not exceed the maximum Credit Allowance that could be determined for that Credit Support Provider pursuant to Paragraph 2.3.

2.21 Where the User disputes the Company's calculation of Value at Risk or the Credit Allowance, the provisions of Paragraph 8 of this Schedule shall apply.

Annex 4 - Workgroup Attendance Register

Name	Organisation	Role	24/5/11 Attended?	09/6/11 Attended?	25/07/11 Attended?
Paul Jones	E.ON	Chairman	Yes	Yes	Yes
Steve Lam	National Grid	Technical Secretary	Yes	Yes	Yes
Andy Clay	National Grid	National Grid representative	Yes	Yes	Yes
Jon Dixon	Ofgem	Authority Representative	Teleconference	No	Teleconference
Abid Sheikh	Ofgem	Authority Representative	No	Teleconference	No
Garth Graham	SSE	Workgroup Member	Teleconference	Teleconference	Teleconference
Paul Mott	EDF Energy	Workgroup Member	Yes	Yes	Yes
Esther Sutton	E.ON	Workgroup Member	Yes	Yes	Yes
Philip Hayward	Opus Energy	Workgroup Member	Yes	Yes	Yes

Annex 5 – Workgroup Consultation Responses

This section contains the 4 responses to the Workgroup Consultation

CUSC Workgroup Consultation Response Proforma

CMP197 – Amendment to Qualifying Guarantor

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **14 July 2011** to cusc.team@uk.ngrid.com Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Steve Lam at Steven.lam@uk.ngrid.com.

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

Respondent:	<i>Garth Graham (01738 456000)</i>
Company Name:	Scottish and Southern Energy, Southern Electric, Airtricity Developments (Scotland) Limited, Airtricity Developments (UK) Limited, Clyde Wind Farm (Scotland) Limited, Greenock Wind Farm (Scotland) Limited, Griffin Wind Farm Limited, Keadby Developments Limited, Keadby Generation Limited, Medway Power Limited, Slough Energy Supplies Limited, SSE (Ireland) Limited, SSE Energy Limited and SSE Generation Limited.
Please express your views regarding the Workgroup Consultation, including rationale. (Please include any issues, suggestions or queries)	We welcome this Modification proposal. If this change is brought into effect we believe there would be merit in National Grid providing an annual KPI statement to the Panel advising (in an anonymous way) the number of counterparties, for example, that have been assisted by this change and, if a guarantor fails, how many counterparties failed as a result.
Do you believe that the modification proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.	<i>For reference, the Applicable CUSC Objectives are:</i> <i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i> <i>(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.</i> We believe that CMP197 is neutral with respect to applicable CUSC objective (a). In respect of applicable CUSC objective (b) we concur with the views of the Proposer as set out in paragraph 7.3 of the consultation document that CMP197 does better achieve

	applicable CUSC objective (b).
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Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.	We concur with implementation approach set out in section 6 of the consultation document.
Do you have any other comments?	We note the potential competition law aspects of a guarantor withdrawing a guarantee to a counterparty which place the affected party in an uncompetitive position by virtue of, potentially, having to withdraw from the market. However, as noted in paragraph 4.11 of the consultation document, it is the responsibility of all concerned to ensure they comply with their legal obligations as appropriate.
Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?	No

Specific questions for CMP197

Q	Question	Response
1	Do you believe that a cap should be imposed whereby the aggregate total of all Guarantees provided to other Users cannot exceed the total credit allowance for a Guarantor, less their own requirements?	Yes we believe there should be a cap as described in paragraphs 3.2 (17% - 10% to cover own requirements and up to 7% offered to other CUSC Parties) and 3.4 (the £10,000 total)
2	Do you believe that payment history should be allowed for the provision of a Qualifying Guarantee?	No. We concur with the view of the Workgroup, as set out in paragraph 4.13, that to allow this would increase the risk to National Grid and to the industry as any costs could potentially be passed through.

CUSC Workgroup Consultation Response Proforma

CMP197 – Amendment to Qualifying Guarantor

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **14 July 2011** to cusc.team@uk.ngrid.com Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Steve Lam at Steven.lam@uk.ngrid.com.

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

Respondent:	Paul Mott
Company Name:	EDF Energy
Please express your views regarding the Workgroup Consultation, including rationale. (Please include any issues, suggestions or queries)	In general, the consultation is a good description of the modification proposal. However, in one area, we disagree with the modification as interpreted, and the attached legal text, as it does not take forward the modification proposal in the most satisfactory manner, involving un-necessary disturbance to baseline.
Do you believe that the modification proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.	<i>For reference, the Applicable CUSC Objectives are:</i> <i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i> <i>(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.</i> We do not believe that the modification proposal better facilitates the Applicable CUSC Objectives. It would permit the use of ratings by independent credit reference agencies which do not continuously check the financial health of the firms for which they provide a rating. Their ratings are to be regarded as more of a one-off or shapshot statement of financial health. They would be a very good deal less likely to identify that a rated firm was going into financial difficulties. They do not operate in the regulated environment of the approved credit rating agencies and do not generally declare their rating criteria and ongoing approach in the same manner.

	<p>Because of the intermittent or spot nature of ratings by these credit reference agencies, we believe that there would be, if CMP197 were passed, an increase in the risk that a firm would fail whilst it was still well-rated by these smaller agencies, and therefore whilst it still had in place a rating that allowed it to offer guarantees to other CUSC parties.</p> <p>This risk, if CMP197 were passed, would be damaging to the facilitation of CUSC applicable objective (b) in comparison to baseline. By increasing the exposure of CUSC parties to default risk of other CUSC parties, it would increase the risk and cost of capital of operating in the sector, and could deter entry and participation.</p>
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<p>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</p>	<p>We disagree with the legal text attached to the consultation, as it does not take forward the modification proposal in the most satisfactory and accurate manner, involving disturbance to baseline unrelated to the new basis of a new form of guarantee.</p>
<p>Do you have any other comments?</p>	<p>No</p>
<p>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</p>	<p>No</p>

Specific questions for CMP197

Q	Question	Response
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Q	Question	Response
1	<p>Do you believe that a cap should be imposed whereby the aggregate total of all Guarantees provided to other Users cannot exceed the total credit allowance for a Guarantor, less their own requirements?</p>	<p>In the event that CMP197 is approved and entities offering guarantees to other CUSC Parties are able to make the guarantee on the basis of Independent Credit Assessments, this cap should be imposed. Independent Credit Assessments are made on almost a one-off basis and are not effectively continuously reviewed we therefore consider them to represent a greater risk, which warrants the use of a cap. We note the workgroup's aspiration that the firm offering a guarantee would declare any financial distress to the recipient of the guarantee, and that the latter would declare this information to NG (there being no clear onus or legal requirement to do so). This aspiration of the workgroup appears a little optimistic.</p> <p>However, we do not believe that there is any valid reason to disturb the baseline whereby entities reliant on a rating by an Approved Credit Rating agency, can currently make Guarantees on an uncapped basis; there are no operational problems with baseline in this area, and we have high confidence in ratings by Approved Credit Rating agencies.</p>
2	<p>Do you believe that payment history should be allowed for the provision of a Qualifying Guarantee?</p>	<p>No, payment history provisions in the CUSC are included to help new Parties which lack a credit rating. These provisions are generous to new Parties to give them at least some Allowed Credit at a fairly early stage. We agree with the Workgroup that it would be unduly risky, and inappropriate, to permit those relying on payment history, to offer guarantees, based on their own payment history, to other CUSC Parties, with or without a cap.</p>

CMP197 – Amendment to Qualifying Guarantor

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **14 July 2011** to cusc.team@uk.ngrid.com Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Steve Lam at Steven.lam@uk.ngrid.com.

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

Respondent:	<i>Esther Sutton</i>
Company Name:	<i>E.ON UK</i>
Please express your views regarding the Workgroup Consultation, including rationale. (Please include any issues, suggestions or queries)	<p><i>We would express cautious support for this modification as potentially better facilitating effective competition by reducing barriers to entry. However while the proposer may see merit in making such a change we are concerned that CMP197 in making a change of benefit to a few parties, does not undermine the robustness of the CUSC credit arrangements potentially to the detriment of all. While desirable to make it easier for parties to participate in the market, this must always be with the proviso that appropriate safeguards are maintained to ensure that other parties are not put at undue risk of incurring costs to cover charges incurred by a defaulting party.</i></p> <p><i>We note that as highlighted under previous UNC proposals, Standard & Poor define companies with a BB credit rating as being those that are "Less vulnerable in the near-term but faces major ongoing uncertainties to adverse business, financial and economic conditions"¹. On this basis we remain concerned at the prospect of allowing companies who cannot achieve this rating to provide guarantees.</i></p>
Do you believe that the modification proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.	<p><i>For reference, the Applicable CUSC Objectives are:</i></p> <p><i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i></p> <p><i>(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such</i></p> <p><i>CMP197 might better meet objective (b) by assisting smaller</i></p>

¹ <http://www.standardandpoors.com/ratings/definitions-and-faqs/en/us>

	<p><i>companies in providing more affordable means of providing credit. However it would be detrimental under (b) in that making the credit arrangements less robust by removing the Approved Credit Rating requirement for a guarantor seems likely to put other Users at greater risk of having to pick up costs if a guarantor fails and a User was unable to provide security. Hence our view that as the proposal suggests limits must indeed be put in place on the amount of credit that a company may provide. As the Workgroup has noted however the onus would be on the User and guarantor to manage their level of cover and inform National Grid of changes.</i></p>
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<p>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</p>	<p><i>Yes, if implemented it would be appropriate to do so in accordance with the usual CUSC timeframe of ten working days after an Authority decision.</i></p>
<p>Do you have any other comments?</p>	<p><i>No.</i></p>
<p>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</p>	<p><i>No.</i></p>

Specific questions for CMP197

Q	Question	Response
1	<p>Do you believe that a cap should be imposed whereby the aggregate total of all Guarantees provided to other Users cannot exceed the total credit allowance for a Guarantor, less their own requirements?</p>	<p><i>Yes. This would be prudent and although not in the UNC would keep the CUSC in line with the DCUSA. As Ofgem stated in their decision on UNC mod 146, it is only sensible that if another company is to be allowed to provide a guarantee for a User, any such 'guarantee must however be sufficiently robust. It must also be either unlimited or, if limited, it must ensure that the unsecured credit limit assigned to a User does not exceed the limit of the guarantor's ability to take on and successfully manage risk.' The suggested approach under the CUSC seems appropriate.</i></p>

Q	Question	Response
2	Do you believe that payment history should be allowed for the provision of a Qualifying Guarantee?	<i>No, as the Workgroup have discussed we agree that this would be inappropriate. Past payment history being utilised to calculate free 'Allowed' credit for new market entrants is appropriate to assist those Users, but to also allow payment history to be used for a guarantor to provide a Qualifying Guarantee to help make up the remainder of any Users Security Requirement would not be suitable. It is also not the case in DCUSA or the BSC (where only cash or Letters of Credit, not guarantees, are accepted anyway).</i>

CUSC Workgroup Consultation Response Proforma

CMP197 – Amendment to Qualifying Guarantor

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **14 July 2011** to cusc.team@uk.ngrid.com Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Steve Lam at Steven.lam@uk.ngrid.com.

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

Respondent:	<i>Simon Lord</i>
Company Name:	<i>First Hydro Company</i>
Please express your views regarding the Workgroup Consultation, including rationale. (Please include any issues, suggestions or queries)	
Do you believe that the modification proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.	<p><i>For reference, the Applicable CUSC Objectives are:</i></p> <p><i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i></p> <p><i>(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.</i></p> <p>Yes (b)</p>

Do you support the proposed implementation approach? If not, please state why and	Yes
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provide an alternative suggestion where possible.	
Do you have any other comments?	Yes Independent Credit Assessments should be reviewed/undertaken on a regular basis to take account of any change in creditworthiness of the User/Guarantor and their Credit Assessment Score/Allowed Credit, and need to be undertaken in a consistent manner/basis by all and any Parties undertaking such Assessments
Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?	No

Specific questions for CMP197

Q	Question	Response
1	Do you believe that a cap should be imposed whereby the aggregate total of all Guarantees provided to other Users cannot exceed the total credit allowance for a Guarantor, less their own requirements?	Yes
2	Do you believe that payment history should be allowed for the provision of a Qualifying Guarantee?	No

Annex 6 – Code Administrator Consultation Responses

This section contains the 2 responses to the Code Administrator Consultation

CUSC Workgroup Consultation Response Proforma

CMP197 – Amendment to Qualifying Guarantor

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **26 September 2011** to cusc.team@uk.ngrid.com Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its recommendation to the Authority

Any queries on the content of the consultation should be addressed to Steve Lam at Steven.lam@uk.ngrid.com.

These responses will be included in the Final CUSC Modification Report which is submitted to the CUSC Modifications Panel.

Respondent:	Paul Mott paul.mott@edfenergy.com 0203 126 2314
Company Name:	EDF Energy
Do you believe that the modification proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.	<p><i>For reference, the Applicable CUSC Objectives are:</i></p> <p><i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i></p> <p><i>(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.</i></p> <p>We do not believe that the modification proposal better facilitates the Applicable CUSC Objectives. It would permit the use of ratings by independent credit reference agencies which do not continuously check the financial health of the firms for which they provide a rating. Their ratings are to be regarded as more of a one-off or snapshot statement of financial health. They would be a good deal less likely to identify that a rated firm was going into financial difficulties. They do not operate in the regulated environment of the approved credit rating agencies and do not generally declare their rating criteria and ongoing approach in the same manner.</p> <p>Because of the intermittent or spot nature of ratings by these credit reference agencies, we believe that there would be, if CMP197 were passed, an increase in the risk that a firm would fail whilst it was still well-rated by these smaller agencies, and therefore whilst it still had in place a rating that allowed it to offer guarantees to other CUSC parties. Although we note that the inverse would also be true in that potential improvements in the creditworthiness of the firm would not be picked up on a regular</p>

	<p>basis.</p> <p>This risk, if CMP197 were passed, would be damaging to the facilitation of CUSC applicable objective (b) in comparison to baseline. By increasing the exposure of CUSC parties to default risk of other CUSC parties, it would increase the risk and cost of capital of operating in the sector, and could deter entry and participation.</p> <p>We note the working group’s consideration that the beneficiary of a guarantee has an obligation under the CUSC to notify NG where it had information from its business relationship with its guarantor, that the guarantor was financial unstable or deteriorating. We note also that such disclosure to NG would rely on the beneficiary having detailed knowledge of the guarantor’s creditworthiness, the beneficiary having the same interpretation as NG as to what constitutes financial deterioration, and the beneficiary being able to procure alternative security in a short timescale should the guarantee no longer be deemed to constitute sufficient security. Whilst we believe that CUSC parties do take their obligations very seriously, we have some concern that the probability of any enforcement action against the recipient for not declaring knowledge of a guarantor’s deterioration appears to be low, since NG as code administrator would not have proof of what the recipient knew.</p>
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<p>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</p>	<p>We agree with the workgroup’s consideration that, where the allowed credit from a guarantor to multiple recipients of guarantees falls, the reduction should be pro-rata and uniformly applied to all recipients of guarantees. The alternative “last in first out” possibility would appear to involve more work for NG’s credit team during a crisis with at least some risk of errors in its application. The pro-rata approach, advised by NG as the most operable, sounds best.</p>
<p>Do you have any other comments?</p>	<p>No</p>

CMP197 – Amendment to Qualifying Guarantor

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses by **26 September 2011** to cusc.team@uk.ngrid.com Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the CUSC Modifications Panel when it makes its recommendation to the Authority

Any queries on the content of the consultation should be addressed to Steve Lam at Steven.lam@uk.ngrid.com.

These responses will be included in the Final CUSC Modification Report which is submitted to the CUSC Modifications Panel.

Respondent:	<i>Esther Sutton</i> <i>esther.sutton@eon-uk.com</i>
Company Name:	<i>E.ON UK</i>
Do you believe that the modification proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.	<p><i>For reference, the Applicable CUSC Objectives are:</i></p> <p><i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i></p> <p><i>(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.</i></p> <p><i>Yes, our views have not changed since the Workgroup consultation. Essentially we believe that on balance CMP197 could support objective (b). It would assist smaller companies in competing in the market by providing a more affordable method for them to provide credit. However we are mindful that conversely it would have a detrimental impact on (b), making the credit arrangements less robust by removing the Approved Credit Rating requirement for a BB- or Ba3 rating. Allowing Independent Credit Assessments to suffice risks leaving other Users a greater chance of having to pick up costs if such a guarantor fails and a User cannot provide security. Hence we agree that the sum of all Guarantees offered by a party must not exceed the total credit that they are able to provide a guarantee for. On balance, albeit with some reservations we thus support CMP197.</i></p>

Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.	<i>Yes, the usual CUSC implementation approach of 10 Working Days after an Authority decision would be appropriate for CMP197.</i>
Do you have any other comments?	<i>No.</i>