

Amendment proposal:	Connection and Use of System Code (CUSC) Modification Proposal 198: Proposer Ownership of CUSC modification proposals (CMP198)		
Decision:	The Authority ¹ directs that this proposal be made ²		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the CUSC and other interested parties		
Date of publication:	17 January 2012	Implementation Date:	31 January 2012

Background to the amendment proposal?

Under prevailing CUSC modification rules, once the CUSC Modification Panel refers a proposal to a workgroup for development, that workgroup effectively takes on the ownership of the proposal. Any subsequent changes to the proposal are then at the discretion of that workgroup, rather than the proposer. Whilst the proposer can participate in the workgroup, they may represent a minority view and/or the proposal may be developed in a manner, or have an impact, which the proposer did not intend.

The Code Administrators Working Group (CAWG) was established as part of Ofgem's Code Governance Review (CGR). The aim of the CAWG was to explore the simplification and convergence of code modification processes and encourage best practice. The lack of influence over their own proposals was identified as an issue by several small participants who contributed to the CAWG. They suggested that this disenfranchisement was one of the reasons that they did not participate more fully in industry processes.

In its report to the Authority³, the CAWG put forward several recommendations, together with an assessment of how their adoption would better facilitate the good governance principles which the CGR sought to advance. Those recommendations formed the basis for the subsequent Code Administration Code of Practice⁴ (CACoP). Code Administrators are now obligated by licence to adhere to the principles set out in the CACoP.

The amendment proposal

NGET raised CMP198 in order to align the CUSC modification rules more closely with the principles contained within the CACoP, in particular principle 6 which states that:

"A proposer of a Modification will retain ownership of the detail of their solution".

The proposal modifies the CUSC modification rules in order to allow the proposer to change their proposal, by giving notice to the Chair of the relevant work group. This will be limited to the point at which the workgroup conducts a final vote on the proposal, after which the Code Administrator will issue the proposal for consultation.

CMP198 also clarifies that if the proposer requests that the proposal proceed directly to the Code Administrators consultation, their right to vary the proposal shall lapse. It will also place a requirement upon the Code Administrator to detail any variation made by the proposer within the final modification report.

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

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

³ See http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/CAWG/Documents1/CAWG_REPORT_200409.pdf

⁴ See: <http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/Documents1/FinalCoP.pdf>

In addition to the principle of proposer ownership, principle 9 of the CACoP⁵ sets out certain principles relating to the production of legal text. CMP198 also seeks to bring the CUSC modification rules into line with that principle by providing that text is produced prior to consultation and for the Panel to agree minor corrections to that text at the time of making its final recommendation. If the CUSC Panel cannot agree that the change to text is minor, they may instruct the Code Administrator to carry out a further consultation on whether that change should be made.

A working group alternative was raised which seeks to provide a solution that is more consistent with the prevailing Balancing and Settlement Code (BSC) arrangements with respect to proposer ownership, as modified by P247A which was implemented in May 2010. The difference between the CMP198 original and alternative proposal is that the latter would give the proposer the right to address the CUSC modification Panel as part of its consideration of the modification report on their proposal.

CUSC Panel⁶ recommendation

The CUSC Panel considered the draft FMR for CAP198 at its meeting of 25 November 2011. The Panel voted unanimously that CMP198 would better facilitate Applicable Objectives a) and b) and that it was neutral against Applicable Objective c). It voted by a majority that the alternative proposal did not further the Applicable Objectives and should be rejected.

The full views of Panel members can be found in the FMR.

The Authority's decision

The Authority has considered the issues raised by CMP198 and the Final Modification Report (FMR) dated 8 December 2011. The Authority has considered and taken into account the responses to NGET's consultation on the amendment proposal which are attached to the FMR⁷. The Authority has concluded that:

1. implementation of the amendment proposal will better facilitate the achievement of the Applicable Objectives of the CUSC⁸; and
2. directing that the amendment be made is consistent with the Authority's principal objective and statutory duties⁹.

Reasons for the Authority's decision

We agree with the CUSC Panel that this modification should be assessed against Applicable Objectives a) and b). We do not consider Applicable Objective c) to be relevant in this case. We note that the proposal received unanimous support from both the CUSC modification Panel and consultation respondents.

⁵ Principle 9: Legal text will be produced and consulted upon prior to a Modification being recommended for Approval.

⁶ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with the section 8 of the CUSC.

⁷ CUSC amendment proposals, amendment reports and representations can be viewed on NGET's website at <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/>

⁸ As set out in Standard Condition C10(1) of NGET's Transmission Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=16150

⁹ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989.

a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by [its] licence

On 5 July 2010 we directed the modification of standard condition C10 of the NGET licence amongst others, which requires the code administrator of the CUSC, which is currently NGET itself, to have regard to and be consistent with the principles contained in the CACoP.

We consider that the implementation of CMP198 will bring the CUSC modification rules into line with principles 6 and 9 of the CACoP, as set out above.

We therefore agree with those respondents who commented that in bringing the CUSC modification rules into line with these principles, NGET will be able to efficiently discharge the obligation placed upon it by Standard Condition C10 of its licence.

Whilst there are some elements of the proposal that are not specifically provided for within the CACoP, we do not consider them to be contradictory to the intent of the CACoP or the principles contained within it. For instance, where the proposal proceeds directly to the Code Administrators consultation, it is reasonable that the proposer's right to vary their proposal shall lapse.

We also consider that the requirement for any variation made by the proposer to be detailed within the FMR will aid the transparency and understanding of the proposal. In particular, it will assist any interested parties who may not have monitored the progress of the proposal throughout its development.

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

As referenced by the proposer, principle 6 of the CACoP seeks to give the proposer of any industry code modification greater influence over what subsequently happens to their proposal, particularly in terms of any changes to the proposal that the workgroup may suggest.

Whilst it would of course be preferable for the development of a modification to be a collaborative exercise, we recognise that different members of the working group will have differing views. Indeed, the differing perspectives of a given proposal that individual members may bring to a workgroup is part of its value to the overall process. However, it is always possible and legitimate that the proposer will have a minority view on the benefits or feasibility of their proposal, or any subsequent variations to it. The role of the workgroup is therefore to provide an assessment of that proposal in the proposers preferred form, or to put forward their own alternative, both of which will then be consulted upon and ultimately decided upon by the Authority¹⁰.

We agree with those respondents who suggested that the implementation of this modification will better facilitate effective competition to the extent that it makes the CUSC modifications procedures more accessible to, and therefore encourage greater participation of, smaller or more niche industry players. This will not only allow those parties to put forward innovative proposals, but also encourage their engagement in the

¹⁰ Or by the CUSC Panel in the case of a low materiality self-governance modification proposal.

process more generally. This will also improve the modification process, including the workgroup assessment, the Panel recommendation and eventual decision maker to have better regard to the impacts of any proposal on those parties.

Choosing between the Proposal and the Alternative

We note that the alternative proposal was raised and progressed on the premise that it would be more consistent with the BSC. We welcome the regard the workgroup has shown for consistency across the codes.

As discussed by the workgroup, the key difference between the P247 alternative proposal that the Authority directed and the original proposal that it rejected, was that the original included a right for the proposer to address the Panel. As noted in our decision letter on P247, the BSC modification rules already allow for a non-discriminatory right to address the Panel in the circumstances suggested by the P247 proposer. We therefore considered that there was no proven defect in that respect.

Although some of the respondents to the Code Administrator's consultation on CMP198 were concerned that the additional right of the proposer to address the CUSC Panel could be discriminatory or introduce an inequity in the process, we do not consider this to be a material concern. We are confident that the CUSC Panel will make an independent assessment of the proposal based on the analysis before them, as contained within the modification report.

Nonetheless, we consider that any representation at that stage of the process should be limited to raising any concerns with the manner in which the proposal has been assessed and or presented in the draft modification report; it is not a final opportunity to lobby the panel for a particular recommendation. Noting the concern that this could be the unintended consequence of the alternative proposal, we consider that the certainty of process offered by the original proposal is preferable. We recognise that there is some inconsistency across codes in the access relevant Panels offer to proposer's late in the process and a degree of ambiguity within the CACoP itself. We will therefore consider whether to refine this element of the CACoP as part of the forthcoming review of that document.

Decision notice

In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority, hereby directs that CMP198: *'Proposer Ownership of CUSC modification proposals'* be made.

Declan Tomany
Associate Partner, Legal - Smarter Grids & Governance

Signed on behalf of the Authority and authorised for that purpose.