



Direct Dial: 020-7901-7355

11 December 2002

The National Grid Company, CUSC Signatories and  
Other Interested Parties

Your Ref: CAP041  
Our Ref: IND/COD/CUSC/CAP041

Dear Colleague,

**Amendment to the Connection and Use of System Code ("CUSC") - Decision and Direction in relation to Proposed Amendment CAP041: "Withdrawal of Amendment Proposals".**

The Gas and Electricity Markets Authority (the "Authority"<sup>1</sup>) has carefully considered the issues raised in the Amendment Report<sup>2</sup> in respect of Proposed Amendment CAP041 "Withdrawal of Amendment Proposals".

The National Grid Company plc ("NGC") recommended to the Authority that Proposed Amendment CAP041 be approved with an implementation date of 10 days after the Authority's decision.

The Authority has decided to direct a modification to the CUSC.

This letter explains the background to Proposed Amendment CAP041, as set out in the Amendment Report, and sets out the Authority's reasons for its decision. In addition, this letter contains a direction to NGC to modify the CUSC in respect of Alternative Amendment (A).

This letter constitutes the notice by the Authority under Section 49A of the Electricity Act 1989 in relation to the direction.

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<sup>1</sup> Ofgem is the office of the Authority. The terms "Ofgem" and "the Authority" are used interchangeably in this letter.

<sup>2</sup> CAP041 Amendment Report dated 3 October 2002.

## **Background**

At the CUSC Amendments Panel Meeting on 22 March 2002, the Amendments Panel established the Governance Standing Group (GSG) to consider and report on issues relating to the current Amendment Process as set out in Section 8 of the CUSC. One of the issues considered by the GSG was the process of withdrawal of Amendment Proposals set out in paragraph 8.15.8 of the CUSC. The GSG recommended that an Amendment Proposal should be prepared and submitted so as to clarify the process of withdrawal of Amendment Proposals. This view was incorporated in the GSG report submitted to the Amendments Panel at the Amendments Panel Meeting on 16 August 2002.

Proposed Amendment CAP041 was raised by NGC on 8 August 2002 and was submitted for consideration at the CUSC Amendments Panel Meeting on 16 August 2002. At the meeting the Panel determined that the Proposed Amendment should proceed to wider consultation by NGC. A consultation paper was issued on 22 August 2002 with responses invited by 19 September 2002. The final Amendment Report was submitted to the Authority on 3 October 2002.

## **The Proposed Amendment**

Proposed Amendment CAP041 seeks to amend paragraph 8.15.8 of the CUSC to clarify the process of withdrawal of Amendment Proposals. The Proposer considered that paragraph 8.15.8 of the CUSC is unclear as to whether a Proposer may issue a withdrawal notice in respect of his/her Amendment Proposal at any time during the Amendment Process or only during the period between submission and the Amendments Panel Meeting at which the proposal is first considered.

Proposed Amendment CAP041 seeks to remove paragraph 8.15.8(d) of the CUSC to clarify that a Proposer may issue a withdrawal notice in respect of his/her Amendment Proposal at any time during the Amendment Process. In addition, the Proposed Amendment seeks to amend paragraphs 8.15.8(b) and (c) of the CUSC to clarify that, following the issue of a withdrawal notice in respect of an Amendment Proposal, a CUSC Party wishing to replace the original Proposer as the new Proposer of the Amendment Proposal must submit a notice "of support" to the Panel Secretary. Finally, the Proposed Amendment seeks to amend Paragraph 8.15.8(c) of the CUSC to clarify that, if no notice of support is received from a CUSC Party wishing to replace the original Proposer as the new Proposer of the Amendment Proposal, the Amendment Proposal is marked as withdrawn on the Amendment Register.

The Proposer considered that Proposed Amendment CAP041 would better facilitate achievement of the Applicable CUSC Objective C7F.1(a) for the efficient discharge by NGC of

the obligations imposed upon it under the Act and by its Transmission Licence<sup>3</sup> since it would clarify the process of withdrawal of Amendment Proposals.

### **Alternative Amendment (A)**

Alternative Amendment (A) was submitted during wider consultation in respect of Proposed Amendment CAP041. The proposer of Alternative Amendment (A) supported the principle of the Proposed Amendment but put forward a number of additional amendments to clarify that, when a Proposer issues a withdrawal notice in respect of his/her Amendment Proposal, it is his/her support for the proposal that is being withdrawn rather than the Amendment Proposal itself (which may or may not be withdrawn depending on whether or not another CUSC Party replaces the original Proposer as the new Proposer of the Amendment Proposal). In addition, Alternative Amendment (A) seeks to amend paragraph 8.15.8(b) to clarify that, when notifying CUSC Parties that a Proposer has issued a withdrawal notice in respect of his/her Amendment Proposal, CUSC Parties are notified that the Amendment Proposal is to be withdrawn rather than deleted (as under the current wording of the CUSC).

### **Alternative Amendment (B)**

Alternative Amendment (B) was submitted during wider consultation in respect of Proposed Amendment CAP041. The proposer of Alternative Amendment (B) considered that it would be an inefficient use of the Amendment Process to allow a Proposer to be able to issue a withdrawal notice in respect his/her Amendment Proposal at any time. Alternative Amendment (B) therefore seeks to amend paragraph 8.15.8 to allow a Proposer to issue a withdrawal notice in respect his/her Amendment Proposal only during the period between submission and wider consultation by NGC.

### **Alternative Amendment (C)**

Alternative Amendment (C) was submitted during wider consultation in respect of Proposed Amendment CAP041. The proposer of Alternative Amendment (C) supported the principle of the Proposed Amendment but considered that the Amendments Panel should be required to notify CUSC Parties a second time that a Proposer has issued a withdrawal notice in respect of his/her Amendment Proposal. The proposer of Alternative Amendment (C) considered that this would

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<sup>3</sup> The Applicable CUSC Objectives are contained in Standard Condition C7F of the licence to transmit electricity treated as granted to NGC under Section 6 of the Electricity Act 1989 as amended (the "Transmission Licence") and 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.

allow CUSC Parties a second opportunity to notify the Panel Secretary should such a Party wish to replace the original Proposer as the new Proposer of the Amendment Proposal.

### **Respondents' views**

NGC issued a consultation paper on 22 August 2002 inviting views from CUSC Parties and interested parties.

NGC received seven responses to the consultation in respect of Proposed Amendment CAP041, of which three respondents supported the Proposed Amendment, three respondents supported the nature and purpose of the Proposed Amendment but each submitted an Alternative Amendment that they supported in preference, and one respondent expressed neither support nor opposition to the Proposed Amendment.

One respondent that supported the Proposed Amendment considered that it would aid the procedures for modification of the CUSC and thereby better facilitate achievement of the Applicable CUSC Objectives since it would improve the clarity of the withdrawal process set out in paragraph 8.15.8 of the CUSC

Each of the three respondents that did not support the Proposed Amendment submitted an Alternative Amendment that they considered would better facilitate achievement of the Applicable CUSC Objectives as compared with the Proposed Amendment. These Alternative Amendments have been described previously in this letter and are contained in full in the Amendment Report in respect of Proposed Amendment CAP041.

The respondent that expressed neither support nor opposition to the Proposed Amendment stated that in the BSC a Modification Proposal can only be removed before submission to the BSC Panel. Further, the respondent noted that once a Modification Proposal has been submitted to the BSC Panel it is no longer 'owned' by the Proposer and automatically progresses through the Assessment Procedure.

The respondents' views are summarised and contained in the Amendment Report in respect of Proposed Amendment CAP041.

### **Amendments Panel Members' views**

No formal responses were submitted by Amendments Panel Members to the consultation on Proposed Amendment CAP041.

## **NGC's recommendation**

NGC recommended to the Authority that Proposed Amendment CAP041 should be approved with an implementation date of 10 days after the Authority's decision.

NGC considered that the Proposed Amendment would better facilitate achievement of the Applicable CUSC Objectives since it would clarify the process for withdrawal of Amendment Proposals and thereby enable NGC to more efficiently discharge its licence obligations. NGC stated that it did not consider that any of the three Alternative Amendments would better facilitate achievement of the Applicable CUSC Objectives as compared with the Proposed Amendment.

NGC considered that Alternative Amendment (A) raised the issue of whether a Proposer was the 'owner' or 'sponsor' of an Amendment Proposal and that this issue was not pertinent to the issue that the Proposed Amendment was submitted to address. Alternative Amendment (A) seeks to amend paragraph 8.15.8 of the CUSC so as to clarify that, when a Proposer issues a withdrawal notice in respect of his/her Amendment Proposal, it is his/her support for the proposal that is being withdrawn rather than the Amendment Proposal itself. NGC considered that currently in paragraph 8.15.8 of the CUSC a Proposer's withdrawal of support for an Amendment Proposal is implicit when the Proposer issues a withdrawal notice. It was the view of NGC, therefore, that Alternative Amendment (A) was seeking to make an unnecessary and inappropriate amendment to the CUSC.

With regard to Alternative Amendment (B), NGC acknowledged that it may be inefficient to allow a Proposer to withdraw his/her Amendment Proposal, which may have been considered by a Working Group, immediately prior to, or following, wider consultation by NGC. However, NGC considered that it would also be inefficient to allow an Amendment Proposal that no CUSC Party wished to be the Proposer of to progress through the Amendment Procedures.

With regard to Alternative Amendment (C), NGC considered that requiring the Amendments Panel to notify CUSC Parties a second time that an Amendment Proposal is to be withdrawn, regardless of whether the Amendments Panel considers this a necessary step, would "add further delay and confusion" to the process for withdrawal of Amendment Proposals.

## **Ofgem's view**

### The Proposed Amendment

It is Ofgem's view that the changes advanced by Proposed Amendment CAP041 would enhance the transparency and clarity of the CUSC and therefore better facilitate the efficient discharge by NGC of the obligations imposed upon it under the Act and by its Transmission Licence in accordance with Applicable CUSC Objective C7F.1(a).

#### Alternative Amendment (A)

Ofgem considers that the current wording of paragraph 8.15.8 of the CUSC already uses the term 'support' in the context of a CUSC Party wishing to replace the original Proposer as the new Proposer of an Amendment Proposal. It is Ofgem's view, therefore, that the CUSC presupposes that the Proposer of an Amendment Proposal 'supports' the proposal and hence that, when a Proposer issues a withdrawal notice in respect of his/her Amendment Proposal, it is his/her support for the proposal that is being withdrawn rather than the Amendment Proposal itself. Ofgem therefore considers that this change would increase the transparency and clarity of the CUSC and hence would better facilitate achievement of the Applicable CUSC Objective C7F.1(a).

Alternative Amendment (A) also seeks to make an additional amendment to the CUSC to those put forward by the Proposed Amendment to clarify that, following the issue of a withdrawal notice in respect of an Amendment Proposal, CUSC Parties are notified that the Amendment Proposal is to be withdrawn (the current wording of the CUSC states that the Amendment Proposal is to be 'deleted'). Ofgem therefore considers that this additional amendment would increase the transparency and clarity of the CUSC and hence would better facilitate achievement of the Applicable CUSC Objective C7F.1(a).

It is therefore Ofgem's view that Alternative Amendment (A) would better facilitate achievement of the Applicable CUSC Objective C7F.1(a) as compared with the Proposed Amendment and the existing provisions of the CUSC.

#### Alternative Amendment (B)

Ofgem does not consider it appropriate to restrict the period during which a Proposer may issue a withdrawal notice in respect of his/her Amendment Proposal to that prior to wider consultation by NGC. It is Ofgem's view that a key element of the Amendment Procedures is that an Amendment Proposal must receive support from a CUSC Party acting in the capacity of the Proposer in order for it to be allowed to progress through the Amendment Procedures. Ofgem therefore considers that it would be inefficient to allow an Amendment Proposal to progress through consultation by NGC and subsequent preparation and publication of the associated Amendment Report by NGC (both of which require significant work to be undertaken by NGC) if the proposal is not supported by a CUSC Party.

It is therefore Ofgem's view that Alternative Amendment (B) would not better facilitate achievement of the Applicable CUSC Objective C7F.1(a) as compared with the Proposed Amendment and the existing provisions of the CUSC.

### Alternative Amendment (C)

Currently the CUSC provides for the Amendments Panel to have the discretion to decide whether or not to instruct the Panel Secretary to notify CUSC Parties a second time that a Proposer has issued a withdrawal notice in respect of his/her Amendment Proposal. It is Ofgem's view that this provision allows the Amendments Panel to take into account any relevant information concerning the reasons for a withdrawal notice being issued and thereby determine whether it is necessary for CUSC Parties to be notified a second time. It is therefore Ofgem's view that this additional amendment would not better facilitate achievement of the Applicable CUSC Objective C7F.1(a) as compared with the existing provisions of the CUSC.

It is therefore Ofgem's view that Alternative Amendment (C) would not better facilitate achievement of the Applicable CUSC Objective C7F.1(a) as compared with the Proposed Amendment and the existing provisions of the CUSC.

### **The Authority's Decision**

The Authority has therefore decided to direct that Alternative Amendment (A), as set out in the Amendment Report, should be made and implemented.

### **Direction Under Condition C7F.7(a) of NGC's Transmission Licence**

Having regard to the above, the Authority, in accordance with Condition C7F.7(a) of the licence to transmit electricity treated as granted to NGC under Section 6 of the Electricity Act 1989 as amended (the "Transmission Licence"), hereby directs NGC to modify the CUSC in respect of Alternative Amendment (A), as set out in the Amendment Report.

The modification is to be implemented and take effect from 10 days after the Authority's decision.

In accordance with Condition C7F.7(b) of NGC's Transmission Licence, NGC shall modify the CUSC in accordance with this direction of the Authority.

If you have any queries in relation to the issues raised in this letter, please feel free to contact me on the above number.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N. Simpson', with a long horizontal flourish extending from the end.

**Nick Simpson**

**Director of Industry Code Development**

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