










# CMP321:

## Housekeeping Modification to clarify the definition of Affiliate as a result of CMP285.

01	Draft CUSC Modification Report
02	Approved CUSC Modification Fast Track Report

**Purpose of Modification:** This Modification seeks to clarify the definition of ‘Affiliate’ within Section 11 of the CUSC as a result of CMP285 implementation.

	<p>The CUSC Panel, at their meeting on the 27 September 2019 reviewed the Modification and unanimously agreed that CMP321 meet the Fast Track Self-Governance criteria and should be implemented subject to a 15 Working Day appeals window.</p> <p>Appeals Window Open – <b>9 October 2019</b></p> <p>Length of Appeals – <b>15 Working Days</b></p> <p>Appeals window closes – <b>30 October 2019</b></p>
	<b>High Impact:</b> None identified
	<b>Medium Impact:</b> None identified
	<b>Low Impact:</b> CUSC Parties and CUSC Panel

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<b>Timetable</b>		
<b>The Code Administrator recommends the following timetable:</b>		<b>Proposer:</b> Ren Walker
Draft Fast Track Self- Governance Report issued to the CUSC Panel		 <a href="mailto:cusc.team@nationalgrideso.com">cusc.team@nationalgrideso.com</a>
Draft Fast Track Self-Governance Report presented to Panel		 <a href="mailto:Lurrentia.walker@nationalgrideso.com">Lurrentia.walker@nationalgrideso.com</a>
Modification Panel decision		 07969 940 855
Appeals Window closes (15 Working Days)		
Decision implemented in CUSC		

## Proposer Details

<b>Details of Proposer:</b> (Organisation Name)	Ren Walker
Capacity in which the CUSC Modification Proposal is being proposed: (i.e. CUSC Party, BSC Party or "National Consumer Council")	National Grid Electricity System Operator
<b>Details of Proposer's Representative:</b> Name: Organisation: Telephone Number: Email Address:	Ren Walker Code Administrator, National Grid Electricity System Operator 07976 940 855 <a href="mailto:Lurrentia.walker@nationalgrideso.com">Lurrentia.walker@nationalgrideso.com</a>
<b>Details of Representative's Alternate:</b> Name: Organisation: Telephone Number: Email Address:	Joseph Henry Code Administrator, National Grid Electricity System Operator  <a href="mailto:Joseph.Henry2@nationalgrideso.com">Joseph.Henry2@nationalgrideso.com</a>
<b>Attachments (Yes/No): No</b> <b>If Yes, Title and No. of pages of each Attachment:</b>	

## Impact on Core Industry Documentation

<b>BSC</b>	<input type="checkbox"/>
<b>Grid Code</b>	<input type="checkbox"/>
<b>STC</b>	<input type="checkbox"/>
<b>Other</b>	<input type="checkbox"/>

This Modification Proposal has no impact on core Industry documentation.

## 1 Summary

### Defect

The Authority, when making its decision to approve the implementation of CMP285 ‘CUSC Governance Reform – Levelling the Playing Field’, WACM1 – Grouping votes, alternates, and transparency proposals, noted that the definition of Affiliate in Section 11 (Interpretations and Definitions) of the CUSC needs to be modified to make it clear that it applies to Users for the purposes of the definition of Voting Group, as referred to in Annex 8A.

### What

CMP285 ‘CUSC Governance Reform – Levelling the Playing Field’ was raised to reform CUSC governance to enhance the independence and diversity of Panel members and ensure wider engagement from CUSC signatories. On the 4 July 2019, the Authority directed that CMP285 ‘CUSC Governance Reform – Levelling the Playing Field’, WACM1 – Grouping votes, alternates, and transparency proposals, should be implemented on 5 July 2019 but noted that the definition of Affiliate needed clarifying using a Fast- Track Self-Governance Modification.

### Why

Ofgem, in their CMP285 decision letter, directed that a Fast-Track Self-Governance Modification is raised to clarify the definition of Affiliate in Section 11 of the CUSC. The CMP285 decision letter can be found in Annex 1 of this document and via the following link:

<https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/cusc-governance-reform-leveling-playing>

### How

It is proposed that a Fast Track Self-Governance Modification is raised to amend the definition of Affiliate in Section 11 ‘Interpretations and Definitions’ of the CUSC.

## 2 Governance

The CUSC Panel, at their meeting on the 27 September 2019 reviewed the Modification and unanimously agreed that CMP321 meet the Fast Track Self-Governance criteria and should be implemented subject to a 15 Working Day appeals window.

The Proposer recommends that this Modification follows the Fast Track Self-Governance procedure as directed by the Authority in their decision letter as the changes meet the required criteria as the Modification is required as a result of factual change, including but not limited to:

iv) Updating out of date references to other documents or paragraphs.

The Self- Governance criteria is met as the modification is unlikely to discriminate between different classes of CUSC Parties and is unlikely to have a material effect on:

- i) Existing or future electricity customers;
- ii) Competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution or supply of electricity,
- iii) The operation of the National Electricity Transmission System
- iv) Matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies
- v) The CUSC's governance procedures or the CUSC's modification procedures

For information, Fast Track Self- Governance – Guidance

- Rectify internal inconsistencies
- Remove outdated (or redundant) information;
- Correct typographical errors in the CUSC; or
- Further development / detail existing processes or code arrangements (without introducing new requirements upon code parties which significantly impact business practices or systems).

### 3 Why Change?

CMP321 will correctly reflect the changes required under CMP285 decision letter to Section 11 'Interpretations and Definitions' of the CUSC.

### 4 Code Specific Matters

#### Technical Skillsets

Not required.

#### Reference Documents

Ofgem decision letter on CMP285 'Levelling the Playing Field – CUSC Governance Reform' <https://www.nationalgrideso.com/document/147216/download>

### 5 Solution

It is proposed that the definition of Affiliate in Section 11 of the CUSC is modified as directed in the CMP285 decision letter.

### 6 Impacts & Other Considerations

#### Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

This Modification has no impact on the Significant Code Review (SCR) or other significant industry change projects.

## Consumer Impacts

This Modification has no material impact on consumers.

### 7 Relevant Objectives

#### Impact of the modification on the Applicable CUSC Objectives (Standard):

Relevant Objective	Identified impact
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	None
(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;	None
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	None
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive

\*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

The Proposer believes that this change will better facilitate relevant objective (d).

## 8 Implementation

. It is proposed that the CMP321 Fast Track Self- Governance Proposal is implemented 10 Working days after the appeals window closes, providing no objections have been raised.

The proposed implementation date is 12 November 2019.

## 9 Appeals

If you wish to raise an appeal, please email the CUSC Panel Secretary at [CUSC.Team@nationalgrideso.com](mailto:CUSC.Team@nationalgrideso.com), with an explanation as to why you believe that the CUSC Modification Fast Track Proposal does not meet the Fast Track Self – Governance criteria by 29 October 2019.

The approved CUSC Modification Fast Track Self- Governance Modification will not be implemented if an appeal is received.

The CUSC Panel Secretary will notify the CUSC Panel, the Authority and CUSC Parties if an objection is received.

## 10 Legal Text

### *Section 11 – Interpretations and Definitions*

**"Affiliate"**

in relation to **The Company** (and in relation to Paragraphs 3.6.9.8, 6.14, **8A.3.1.2** and 8A.4.2.2, any **User**) means any holding company or subsidiary of **The Company** (or the **User** as the case may be) or any subsidiary of a holding company of **The Company** (or the **User** as the case may be), in each case within the meaning of sections 736, 736A and 736B of the Companies Act 1985 as substituted by section 144 of the Companies Act 1989;

## 11 Annex 1 – Ofgem decision letter on CMP285

Modification proposal:	<b>Connection and Use of System Code (CUSC) CMP285: CUSC Governance Reform - Levelling the Playing Field (CMP285)</b>		
Decision:	The Authority <sup>1</sup> directs that CMP285 WACM1 be made <sup>2</sup>		
Target audience:	National Grid Electricity System Operator Limited (NGESO), Parties to the CUSC, the CUSC Panel and other interested parties		
Date of publication:	4 July 2019	Implementation date:	5 July 2019

## Background

The CUSC panel make up includes a Panel Chair, a consumer representative and not more than seven representatives of Users.<sup>3</sup> The process for Users to elect Panel members is set out at Annex 8A<sup>4</sup> of Section 8 of the CUSC. This process allows each User to submit one voting paper in support of a User candidate. The seven candidates with the highest number of votes are elected as a User Panel member and the next five elected as Alternate members. Appointment as a User Panel member is for two years.

Concerns have been raised that the current CUSC panel composition and voting process could be viewed as not delivering a Panel that represents all CUSC parties. For example, larger companies are able to cast more than one vote due to their subsidiaries also being CUSC parties, which it has been argued could appear to give them greater influence over the voting outcome compared to other parties. There is also a concern that smaller parties are not exercising their right to vote.

Concerns have also been expressed related to transparency, as no detail or summary of the CUSC Panel election is available to industry parties after the conclusion of the election process.

## The modification proposal

UK Power Reserve (the Proposer) raised CMP285 with the Panel on 28 July 2017. CMP285 aims to reform the CUSC governance arrangements to enhance the independence and diversity of panel members and ensure wider engagement from CUSC signatories.

The Proposer's solution consists of the following:

- Grouping votes: CUSC signatories to be grouped under each parent company and limiting the number of votes that a parent company can cast to a maximum of four.

<sup>1</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

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

<sup>3</sup> 'User' is defined in CUSC as a person who is a party to the CUSC Framework Agreement other than National Grid Electricity System Operator Limited.

<sup>4</sup> Election of Users' Panel Members - <https://www.nationalgrideso.com/document/91381/download>



- Transparency: publish business interests of Panel election candidates and members and the outcome of CUSC Panel Elections for greater transparency.
- Consecutive terms: limit consecutive terms to two so that User Panel members can only be appointed for a total of four years.
- Independence: introduce and appoint two, remunerated, independent members to fill any perceived knowledge or experience gaps in the CUSC panel membership following a CUSC Panel election. This would also result in a change to the panel composition of five User elected Panel members plus two independent members compared to the current seven elected members.
- Alternatives: codify the informal rota of panel member Alternates.

The Proposer considers that engagement by smaller or new CUSC parties will be improved because of CMP285 as their votes will count towards a greater percentage of the overall total compared to current arrangements. The Proposer's view is that small or new parties to the CUSC will participate more in the election process if they believe their vote will affect the outcome of the election. They also consider that the modification would give potential for greater diversity of backgrounds on the CUSC Panel and that this will increase interest, confidence and perceived independence of the Panel. The Proposer also considers this change will align the CUSC with, in its view, some of the best practices within the governance of the Balancing and Settlement Code.

The Proposer's view is that the outcome of the panel election vote should be published by the CUSC code administrator to improve transparency. To further enhance transparency candidates for User Panel members must provide, among other things, a declaration of shares they own in any CUSC party or CUSC parties of a total aggregate value of over £10k.<sup>5</sup>

Further, limiting the tenure of a User Panel member to two consecutive terms (i.e. a total of four years) should, in the Proposer's view, result in greater panel diversity and build a greater base of industry expertise by having a wider group of individuals with experience of serving on the CUSC Panel.

It is the view of the Proposer that two independent Panel members could be appointed following the CUSC Panel election, if needed, to fill any knowledge gaps. The Proposer intends National Grid Electricity System Operator would be responsible for appointing the independent members and that the two independent members are remunerated.

The Proposer believes that the informal alternate panel member rota system has merit and should be formalised into the text of the Code.

### **Workgroup Alternative Code Modifications (WACMs)**

There were originally eleven WACMs put forward through the workgroup process. On 25 October 2018, the Proposer and Workgroup discussions led to reducing the eleven WACMs to six plus the Proposer's original modification. The six WACMs comprise a combination of the elements that make up the original modification. The six WACMs are as follows:

WACM 1: Grouping votes, alternates, and transparency proposals.

WACM 2: Grouping votes, independents, alternates and transparency proposals.

WACM 3: Independents, alternates and transparency proposals.

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<sup>5</sup> As per paragraph 8.3.4(e) of draft legal text

WACM 4: Independents, consecutive terms, alternates, and transparency proposals.  
WACM 5: Grouping votes, consecutive terms, alternates, transparency proposals.  
WACM 6: Alternates and transparency proposals.<sup>6</sup>

The Final Modification Report (FMR) for CMP285 was submitted to us on 12 March 2019. On 17 April 2019 (our April letter), we directed that the CMP285 Final Modification Report (FMR) should be revised and resubmitted to us, following further clarification and explanation on the individual elements of the modification.<sup>7</sup>

### **CUSC Panel<sup>8</sup> recommendation**

A special CUSC Panel meeting was held on 17 May 2019 to consider the revised FMR. At this meeting a vote was taken as to whether the Original and WACMs better facilitate the relevant objectives.

The Panel unanimously considered that WACM6 better facilitates the applicable CUSC objectives, and a majority considered that WACM1 also better facilitated the applicable CUSC objectives. The other options (the Original proposal, WACMs 2, 3, 4 and 5) all received support from a minority of the Panel.

In voting on which they considered to be the best option, one Panel member was in favour of the Original, two for each of WACM 1 and WACM 2 and four members were in favour of WACM 6. The Panel members' views are set out in detail in the FMR.

### **Our decision**

We have considered the issues raised by the modification proposal, WACMs 1-6 and the FMR. We have considered and taken into account the responses to the industry consultations on the modification proposal, which are attached to the FMR<sup>9</sup>. We have concluded that:

- implementation of WACM1 and WACM6 would better facilitate the achievement of the applicable objectives of the CUSC;<sup>10</sup>
- WACM1 will best facilitate the achievement of the applicable objectives of the CUSC; and
- directing that CMP285 WACM1 be made is consistent with our principal objective and statutory duties.<sup>11</sup>

### **Reasons for our decision**

We consider WACM1 to best facilitate CUSC objective (d) and have a neutral impact on the other objectives.

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<sup>6</sup> WACM 6 was raised by EDF Energy Limited and was originally the 11<sup>th</sup> alternative before the Proposer decided to withdraw four of his ten alternatives and renumber the remaining alternatives.

<sup>7</sup> <https://www.ofgem.gov.uk/publications-and-updates/authoritys-decision-send-back-cusc-modification-proposal-cmp285>

<sup>8</sup> The CUSC Panel is established and constituted from time to time pursuant to and in accordance with section 8 of the CUSC.

<sup>9</sup> CUSC modification proposals, modification reports and representations can be viewed on NGENSO's website at: <https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc>

<sup>10</sup> As set out in Standard Condition C10(1) of the electricity Transmission Licence, see: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

<sup>11</sup> 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 as amended.

***(d) promoting efficiency in the implementation and administration of the CUSC arrangements***

We consider that publication of panel election outcomes should increase transparency in the CUSC panel election process. Opening the outcome of the election to scrutiny may encourage participation in the election process as it should allow Users to better understand the effect of any vote they cast. For this reason, we consider this proposal better facilitates this objective.

Publishing information on CUSC panel candidates, setting out their interests in CUSC parties (and other interests), should allow Users to make more informed voting decisions. However, we expect the Code Administrator to provide clear guidance to potential panel User candidates about the information they are required to provide and how this information will be treated. We also expect the Code Administrator to monitor and keep under review if this requirement impacts the number and type of User that stands for election.

Codifying the informal alternate panel member rota system should improve efficiency in the implementation and administration of the CUSC by ensuring these arrangements are transparent. It should also mean that a larger number of Alternate members have the opportunity to attend Panel. We note that this proposal codifies the current working practice of the CUSC.

We have considered the proposal to introduce group voting to CUSC and have carefully taken into account the views of respondents and the CUSC Panel. Overall, we agree that the proposal should better facilitate this objective. Limiting the number of votes of a company group to a maximum of four may encourage more CUSC parties to participate in the process. Given the evidence of the low-level of participation by CUSC parties in the election process presented in the FMR, we consider that changing the voting process may re-engage CUSC users and by reducing the overall number of votes cast may allow them to more clearly recognise the impact of their vote or votes on the outcome of the election. This proposal alongside publication of the outcome of the election may increase CUSC User participation.

We consider we have not been provided sufficient evidence to demonstrate that the proposals to limit consecutive terms would better facilitate this objective. Whilst we recognise the aim is to achieve greater panel diversity and to build a greater base of industry expertise by having a wider group of individuals, we also note that limiting the number of terms that a panel member can serve on the Panel could create a risk of not having sufficient Panel nominations for Users to vote on. We also note that this proposal would restrict the possible candidates that CUSC parties may choose to vote for.

We do not consider the proposal to appoint two independent members would better facilitate this objective compared to the current CUSC arrangements. We note that the CUSC includes provisions that allow the Authority to appoint a further CUSC panel member where, in our opinion, there is a class or category of person who have interests in respect of the CUSC but whose interests are not reflected in the composition of the CUSC Panel.<sup>12</sup> We note the comments by respondents to the CA consultation that the appointment of independent members to the CUSC would increase costs in the administration of these arrangements and we share these concerns. Given that we may appoint a further member, we do not consider that this proposal will better facilitate this objective. We also note CUSC panel members are required to act impartially.<sup>13</sup> This

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<sup>12</sup> Section 8.4.3 of CUSC

<sup>13</sup> Section 8.3.4 (a)(i) of CUSC.

change would also result in two User Panel members elected by CUSC parties being replaced by two members appointed by NGESO.

### **Other Issues**

Further to our April letter (in which we asked for clarification of some aspects of the proposed changes), we consider that the definition of Affiliate at section 11 of CUSC should be modified to make it clear it applies to Users for the purposes of the definition of Voting Group referred to in Annex 8A. The legal text<sup>14</sup> and the FMR demonstrate that the intention is that the definition of Affiliate will apply for this purpose, but the definition itself is not clear on this. We therefore expect this clarification to be made to the legal text through a fast track self-governance modification as soon as reasonably possible.

We note the aim of this modification includes ensuring wider engagement from CUSC signatories. We support this goal. To achieve this, we expect the Code Administrator to encourage and facilitate CUSC parties, particularly smaller parties, to participate in CUSC governance processes, including voting in the User Panel member election. We also anticipate that the Panel will monitor the activities of the Code Administrator in carrying out this function, and that the Code Administrator will take all reasonable steps to ensure they implement the new processes in a clear way for users (providing guidance where necessary) and that the arrangements operate effectively and efficiently.

The requirement on the Code Administrator is to publish on or around the 20<sup>th</sup> June each election year a list of Users and their associated voting group. We anticipate that this list will be published shortly for this election year.

### **Decision notice**

In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority, hereby directs that WACM1 of CMP285: CUSC Governance Reform - Levelling the Playing Field be made.

**Lesley Nugent**  
**Deputy Director, Licensing Frameworks**

Signed on behalf of the Authority and authorised for that purpose

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<sup>14</sup> Section 8A3.1.2 of CUSC.