Governance Standing Group Report On Urgency

The following report on urgency has been prepared by the CUSC Governance Standing Group.

The report outlines:

- Principles agreed for changes to the urgency provisions within the CUSC
- Corresponding drafting proposed for the CUSC
- Guidance for an urgent CUSC Amendment Proposal
- A Best Practice Guidance Note for an Urgent CUSC Amendment Proposal
- Summary of the urgent amendment process (as detailed in CUSC Section 8.21)

Principles of Urgency Amendments

- 8.21.1.1 Extension of who can recommend a proposal be treated as Urgent

 this should be extended to include the National Consumer Council and
 BSC Parties (who are able to raise Amendment Proposals)
- Requirement to convene a meeting (as specified in BSC)
- With regards time to convene a meeting, this should be at the chairs discretion (as with the BSC) – therefore "within the time available" should refer to the chairs discretion
- All other provisions for convening a "normal" meeting should be turned off (agenda, material etc)
- Procedure to be specified in the event that not all Panel Members are available
- Drafting to recognise process for when the recommendation for urgency comes from the Company – in this case the decision on urgency should be made by any other Panel Members consulted (as opposed to the chair who works for the Company).
- 8.21.1.3 amended to reflect new process for gaining views in 8.21.1.1
- Amendment Report to include the CUSC Panel and Authority position on urgency
- Post implementation review to be tidied up
- Remove the ability for the CUSC Panel to raise an Amendment Proposal following the post-implementation review

Drafting has been prepared on the basis of these principles, in particular please note:

- Amendment to 8.15 removes the CUSC Panel ability to raise an Amendment Proposal for both urgent and licence changes → this will mean in both cases another party will have to take on the required changes at the end of the review process
- 8.23.5 has been amended to tidy up the use of Working Group Alternative Amendment

8.15 **AMENDMENT PROPOSALS**

- 8.15.1 A proposal to modify the CUSC may be made by a CUSC Party, by the National Consumer Council or by a BSC Party or, under Paragraphs 8.21.8 and 8.23.5, by the Amendments Panel or by a Relevant Transmission Licensee in relation to Exhibit O Part IB and Exhibit O Part IIB only.
- 8.15.2 A proposal made pursuant to Paragraph 8.15.1 shall be submitted in writing and shall contain the following information in relation to such proposal:
 - (a) the name of the **Proposer**;
 - (b) the name of the representative of the **Proposer** (and his alternate) who shall represent the **Proposer** in person for the purposes of this Paragraph 8.15;
 - (c) a description (in reasonable but not excessive detail) of the issue or defect which the proposed amendment seeks to address:
 - (d) a description (in reasonable but not excessive detail) of the proposed amendment and of its nature and purpose;
 - (e) where possible, an indication of those parts of the **CUSC** which would require amendment in order to give effect to (and/or would otherwise be affected by) the proposed amendment and an indication of the nature of those amendments or effects;
 - (f) the reasons why the **Proposer** believes that the proposed amendment would better facilitate achievement of the **Applicable CUSC Objectives** as compared with the current version of the **CUSC** together with background information in support thereof;
 - (g) where possible, an indication of the impact of the proposed amendment on **Core Industry Documents** and the **STC**;
 - (h) where possible, an indication of the impact of the proposed amendment on relevant computer systems and processes used by **CUSC Parties**; and
 - (i) a statement to the effect that the Proposer acknowledges that on acceptance of the proposal for consideration by the Amendments Panel a Proposer which is not a CUSC Party shall grant a licence in accordance with Paragraph 8.15.7; and
 - (j) where the **Proposer** has recommended that the proposed amendment should be treated as an **Urgent Amendment Proposal** in accordance with Paragraph 8.21.1.1, its reasons why the proposed amendment should be treated as such.
- 8.15.3 if a proposal fails in any material respect to provide the information in

Paragraph 8.15.2 (excluding Paragraphs (e), (g) and (h) thereof), the **Panel Secretary** may, subject to Paragraph 8.13.3(a), reject such proposal provided that:

- (a) the **Panel Secretary** shall furnish the **Proposer** with the reasons for such rejection;
- (b) the **Panel Secretary** shall report such rejection to the **Amendments Panel** at the next **Amendments Panel** meeting, with details of the reasons;
- (c) if the Amendments Panel decides to reverse the Panel Secretary's decision to refuse the submission, the Panel Secretary shall notify the Proposer accordingly and the proposal shall be dealt with in accordance with this Section 8;
- (d) nothing in this Section 8 shall prevent a **Proposer** from submitting a revised proposal in compliance with the requirements of Paragraph 8.15.2 in respect of the same subject-matter.
- 8.15.4 Without prejudice to the development of a Working Group Alternative Amendment pursuant to Paragraph 8.20.2, the Amendments Panel shall direct in the case of (a), and may direct in the case of (b), the Panel Secretary to reject a proposal pursuant to Paragraph 8.15 if and to the extent that such proposal has, in the opinion of the Amendments Panel, substantially the same effect as:
 - (a) a **Pending Amendment Proposal**; or
 - (b) a **Rejected Amendment Proposal**, where such proposal is made at any time within two (2) months after the decision of the **Authority** not to direct **The Company** to modify the **CUSC** pursuant to the **Transmission Licence** in the manner set out in such **Amendment Proposal**,

and the **Panel Secretary** shall notify the **Proposer** accordingly.

- 8.15.5 Promptly upon receipt of an Amendment Proposal, the Panel Secretary shall:
 - (a) allocate a unique reference number to the **Amendment Proposal**;
 - (b) enter details of the **Amendment Proposal** on the **Amendment Register**.
- 8.15.6 Subject to Paragraph 8.7.6, where the Amendment Proposal is received more than five (5) Business Days prior to the next Amendments Panel meeting, the Panel Secretary shall place the Amendment Proposal on the agenda of the next Amendments Panel

meeting and otherwise shall place it on the agenda of the next succeeding **Amendments Panel** meeting.

- 8.15.7 It shall be a condition to the right to make a proposal to modify the **CUSC** under this Paragraph 8.15 that the **Proposer:**
 - grants a non-exclusive royalty free licence to all **CUSC Parties** who request the same covering all present and future rights, **IPRs** and moral rights it may have in such proposal (as regards use or application in Great Britain); and
 - (b) warrants that, to the best of its knowledge, information and belief, no other person has asserted to the **Proposer** that such person has any **IPRs** or normal rights or rights of confidence in such proposal,

and, in making a proposal, a **Proposer** which is a **CUSC Party** shall be deemed to have granted the licence and given the warranty in (a) and (b) above.

The provisions of this Paragraph 8.15.7 shall also apply to any **WG** Consultation Alternative Request, and for these purposes the term Proposer shall include any person making such a **WG** Consultation Alternative Request.

- 8.15.8 A **Proposer** may withdraw his support for the **Amendment Proposal** on notice to the **Panel Secretary** at any time, in which case the **Panel Secretary** shall forthwith:
 - (a) notify CUSC Parties that he has been notified of the withdrawal of support by the Proposer by publication on The Company Website and (where relevant details are supplied) by electronic mail. A CUSC Party may within five (5) Business Days notify the Panel Secretary that it is prepared to support the Amendment Proposal in place of the original Proposer. If such notice is received, the name of such CUSC Party shall replace that of the original Proposer as the Proposer, and the Amendment Proposal shall continue. If more than one notice is received, the first received shall be utilised;
 - (b) if no notice of support is received under (a), the matter shall be discussed at the next **Amendments Panel** meeting. If the **Amendments Panel** so agrees, it may notify **CUSC Parties** that the **Amendment Proposal** is to be withdrawn, and a further period of five (5) **Business Days** shall be given for support to be indicated by way of notice;
 - (c) if no notice of support is received under (a) or (b), the Amendment Proposal shall be marked as withdrawn on the Amendment Register;

8.21 URGENT AMENDMENT PROPOSALS AND HOUSEKEEPING AMENDMENTS

8.21.1 Urgent Amendment Proposals

- 8.21.1.1 If any CUSC Party, or the National Consumer Council or any BSC
 Party recommends to the Panel Secretary that a proposal should be treated as an Urgent Amendment Proposal in accordance with this Paragraph 8.21, the Panel Secretary shall notify the Panel Chairman who shall then, in accordance with Paragraphs 8.21.1.1(a) to (e) inclusive, and notwithstanding anything in the contrary in this Section 8, endeavour to obtain the views of the Amendments Panel as to the matters set out in Paragraph 8.21.1.2. If for any reason the Panel Chairman is unable to do that, the Panel Secretary shall attempt to do so (and the measures to be undertaken by the Panel Chairman in the following paragraphs shall in such case be undertaken by the Panel Secretary).
- 8.21.1.1(a) The Panel Chairman shall determine the time by which, in his opinion, a decision of the Amendments Panel is required in relation to such matters, having regard to the degree of urgency in all the circumstances, and references in this Paragraph 8.21.1 to the "time available" shall mean the time available, based on any such determination by the Panel Chairman;
- 8.21.1.1(b) The Panel Secretary shall, at the request of the Panel Chairman, convene a meeting or meetings (including meetings by telephone conference call, where appropriate) of the Amendments Panel in such manner and upon such notice as the Panel Chairman considers appropriate, and such that, where practicable within the time available, as many Panel Members as possible may attend;
- 8.21.1.1(c) Each **Panel Member** shall be deemed to have consented, for the purposes of Paragraph 8.7.9, to the convening of such meeting or meetings in the manner and on the notice determined by the **Panel**Chairman. Paragraph 8.7.10 shall not apply to any such business.

8.21.1.1(d) Where:

- (i) it becomes apparent, in seeking to convene a meeting of the

 Amendments Panel within the time available, that a quorum
 will not be present; or
- (ii) it transpires that the meeting of the Amendments Panel is not quorat and it is not possible to rearrange such meeting within the time available,

the Panel Chairman shall endeavour to contact each Panel Member individually in order to ascertain such Panel Member's vote, and (subject to Paragraph 8.21.1.1(e)) any matter to be decided shall be

decided by a majority of those **Panel Members** who so cast a vote. Where, for whatever reason no decision is reached, the **Panel Chairman** shall proceed to consult with the **Authority** in accordance with Paragraph 8.21.1.4;

- 8.21.1.1(e) Where the **Panel Chairman** is unable to contact at least 4 **Panel**Members within the time available and where:
 - it is only **The Company** who has recommended that the proposal should be treated as an **Urgent Amendment**Proposal, then those Panel Members contacted shall decide such matters, such decision may be a majority decision. Where in such cases no decision is made for whatever reason, the Panel Chairman shall proceed to consult with the Authority in accordance with Paragraph 8.21.1.4; or
 - (ii) any CUSC Party (other than, and/or in addition to, The Company), the National Consumer Council or any BSC Party has recommended that the proposal should be treated as an Urgent Amendment Proposal, then the Panel Chairman may decide the matter (in consultation with those Panel Members (if any) which he managed to contact) provided that the Panel Chairman shall include details in the relevant Amendment Report of the steps which he took to contact other Panel Members first.
 - 8.21.1.2 The matters referred to in Paragraph 8.21.1.1 are:
 - (a) whether such proposal should be treated as an **Urgent Amendment Proposal** in accordance with this Paragraph 8.21 and
 - (b) if so, the procedure and timetable to be followed in respect of such **Urgent Amendment Proposal**.

8.21.1.3

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- (a) the Amendments Panel agrees that such proposal should be treated as an Urgent Amendment Proposal; or
- (b) where the Panel Chairman or the Panel Secretary was unable to contact all Panel Members, the majority of Panel Members contacted so agree; or
- (c) where the Panel Chairman or the Panel Secretary was unable to contact any other Panel Member, the Panel Chairman considers that such proposal should be treated as

an Urgent Amendment Proposal,

the Panel Chairman or, in his absence, the Panel Secretary shall forthwith provide the Authority with the recommendation (if any), ascertained in accordance with Paragraphs 8.21.1.1(a) to (e) inclusive, of the Amendments Panel as to the matters referred to in Paragraph 8.21.1.2, and shall consult the Authority as to whether such Amendment Proposal is an Urgent Amendment Proposal and, if so, as to the procedure and timetable which should apply in respect thereof.

8.21.1.4 If the Amendments Panel has been unable to make a recommendation in accordance with Paragraph 8.21.1.1(d) or Paragraph 8.21.1.1(e) as to the matters referred to in Paragraph 8.21.1.2 following 8.21.1.3 it is not agreed that the Amendment Proposal should become an Urgent Amendment Proposal then the Panel Chairman or, in his absence, the Panel Secretary may recommend whether he considers that such proposal should be treated as an Urgent Amendment Proposal and shall forthwith consult the Authority as to whether such Amendment Proposal is an Urgent Amendment Proposal and, if so, as to the procedure and timetable that should apply in respect thereof.

8.21.1.5 The **Amendments Panel** shall:

- (a) not treat any Amendment Proposal as an Urgent Amendment Proposal except with the prior consent of the Authority;
- (b) comply with the procedure and timetable in respect of any **Urgent Amendment Proposal** approved by the **Authority**; and
- (c) comply with any direction of the **Authority** issued in respect of any of the matters on which the **Authority** is consulted pursuant to Paragraph 8.21.1.3 or Paragraph 8.21.1.4.
- 8.21.1.6 For the purposes of this Paragraph 8.21.1.6, the procedure and timetable in respect of an **Urgent Amendment Proposal** may (with the approval of the **Authority** pursuant to Paragraph 8.21.1.3 or Paragraph 8.21.1.4) deviate from all or part of the **Amendment Procedures** to or follow any other procedure or timetable approved by the **Authority**.
- 8.21.1.7 The Amendment Report in respect of an Urgent Amendment Proposal shall include:
 - (a) a statement as to why the <u>proposer</u> CUSC Party, believes that such Amendment Proposal should be treated as an Urgent Amendment Proposal,

- (b) any statement provided by the Authority as to why the Authority believes that such Amendment Proposal should be treated as an Urgent Amendment Proposal,
- (c) any recommendation of the Amendments Panel (or any recommendation of the Panel Chairman) provided in accordance with Paragraph 8.21.1.1 in respect of whether any Amendment Proposal should be treated as an Urgent Amendment Proposal, and
- (d) and the extent to which the procedure followed deviated from the **Amendment Procedures** (other than the procedures in this Paragraph 8.21.1).
- 8.21.1.8 Each CUSC Party and each Panel Member shall take all reasonable steps to ensure that an Urgent Amendment Proposal is considered, evaluated and (subject to the approval of the Authority) implemented as soon as reasonably practicable, having regard to the urgency of the matter and, for the avoidance of doubt, an Urgent Amendment Proposal may (subject to the approval of the Authority) result in the CUSC being amended on the day on which such proposal is submitted.
- Where an **Urgent Amendment Proposal** results in an amendment being made in accordance with Paragraph 8.21.1.5 8.23, the **Amendments Panel** may or (where it appears to the **Amendments Panel** that there is a reasonable level of support for a review amongst **CUSC Parties**) shall, following such amendment, action a **Standing Group** determine whether or by a **Working Group** in accordance with Paragraphs 8.17 or 8.18 on terms specified by the **Amendment Panel** in order to consider and report as to whether any alternative amendment **Working Group Alternative Amendment** could, as compared with the such amendment being made better facilitate achieving the **Applicable CUSC Objectives** in respect of the subject matter of that **Urgent Amendment Proposal**.

8.23 IMPLEMENTATION

- 8.23.1 The CUSC shall be modified in accordance with the terms of the direction by the Authority relating to, or other approval by the Authority of, the Proposed Amendment or any Working Group Alternative Amendment contained in the relevant Amendment Report or Housekeeping Amendment Report.
- 8.23.2 **The Company** shall forthwith notify (by publication on **The Company Website** and, where relevant details are supplied by electronic mail):
 - (a) each CUSC Party;
 - (b) each Panel Member;
 - (c) the Authority;
 - (d) each Core Industry Document Owner,
 - (e) the secretary of the **STC** committee;

of the change so made and the effective date of the change.

- 8.23.3 An amendment of the **CUSC** shall take effect from the time and date specified in the direction, or other approval, from the **Authority** referred to in Paragraph 8.23.1 or, in the absence of any such time and date, from 00:00 hours on the day falling ten (10) **Business Days** after the date of such direction, or other approval, from the **Authority**.
- 8.23.4 An amendment made pursuant to and in accordance with Paragraph 8.23.1 shall not be impaired or invalidated in any way by any inadvertent failure to comply with or give effect to this Section.
- If an amendment is made to the CUSC in accordance with the Transmission Licence but other than pursuant to the other Amendment Procedures in this Section 8, the Amendments Panel shall determine whether or not to submit the amendment for review by a Standing Group in accordance with Paragraph 8.18 on terms specified by the Amendment Panel in order to consider and report as to whether any alternative amendment Working Group Alternative Amendment could, as compared with the amendment being made better facilitate achieving the Applicable CUSC Objectives in respect of the subject matter of the original amendment.
- 8.23.6 Notwithstanding the provisions of Paragraph 8.23.3, **Amendment Proposal** CAP 160 changes the **Amendment Process** and therefore may affect other **Amendment Proposals** which have not yet become **Approved Amendments**. Consequently, this

Paragraph deals with issues arising out of the implementation of **Amendment Proposal** CAP 160. In particular this Paragraph deals with which version of the **Amendment Process** will apply to **Amendment Proposal(s)** which were already instigated prior to the implementation of **Amendment Proposal** CAP 160.

In respect of any Amendment Proposal which the Amendment Panel has determined, as at the date and time of implementation of Amendment Proposal CAP 160 (as directed by the Authority), should proceed to wider consultation by The Company is known as an "Old Amendment Proposal". In respect of any Amendment Proposal where the Amendment Panel has not determined, as at the date and time of implementation of Amendment Proposal CAP 160 (as directed by the Authority), that it should proceed to wider consultation by The Company is known as a "New Amendment The provisions of Section 8 and the associated definitions in Section 11 which will apply to any **Old Amendment Proposal(s)** are the provisions of Section 8 and the associated definitions in Section 11 of the **CUSC** which are in force immediately prior to the implementation of CAP 160. The provisions of Section 8 and the associated definitions in Section 11 which will apply to any New Amendment Proposals are the provisions of the CUSC in force from time to time.

Guidance for an Urgent CUSC Amendment Proposal

- Agreement that the guidance note should be uploaded to the CUSC website (in the new urgency section)
- A link to the Ofgem provisions for urgency should also be made on the CUSC website (once this has been amended to take wider account than the UNC)

When considering a recommendation for an Amendment Proposal to be treated as urgent the CUSC Panel should take account of the following considerations made by the Authority:

The Authority has previously expressed the view that a Code change proposal, such as a CUSC Amendment Proposal, should only be treated as an Urgent Amendment Proposal if it could not appropriately be treated as non-urgent.

The Authority has also expressed the view that Urgent Amendment Proposals are likely to exhibit at least one of the following characteristics:

- (a) There is a very real likelihood of significant commercial impact upon the Transmission Company, industry parties, or customers if an Amendment Proposal is not urgent;
- (b) Safety and security of the network is likely to be impacted if an Amendment Proposal is not urgent; and/or
- (c) The Amendment Proposal is linked to an imminent date-related event.

Please note that the above areas represent guidance only, and are not definitive criteria. There may therefore be occasions where an Amendment Proposal is deemed to be urgent by the Authority even where it does not exhibit these characteristics (or, conversely, be deemed non-urgent where one or more of the characteristics is exhibited).

Best Practice Guidance Note for an Urgent CUSC Amendment Proposal

- The Governance Standing Group agreed that a Best Practice Guidance Note for dealing with urgent requests should be prepared to assist parties who are considering raising an Urgent CUSC Amendment Proposal
- The information included in this Best Practice Guidance Note will not form part of the CUSC, but provide guidance for future dealings of requests for urgent treatment of an Amendment Proposal
- On completion this Guidance Note should be available on the Forms and Guidance section of the CUSC website (new urgent section)
- A link to all previous Amendment Proposals which were requested for urgent treatment will also be included on this urgent section

Cover Note

It should be noted that:

- this Best Practice Guidance Note on urgency does not form part of the CUSC, nor does deviation from the outlined best practice constitute contravening of CUSC provisions
- in applying the principles of this Best Practice Guidance Note, the CUSC provisions take precedence
- depending on the nature of the Amendment Proposal under consideration not all of the recommendations outlined in this Best Practice Guidance Note will be followed
- Before raising an Amendment Proposal with request for urgency
 - At the earliest opportunity notification should be given to the Panel Secretary that a recommendation for urgency may be made
 - Upon notification from a potential proposer of an Amendment Proposal that a request for urgency may be made, the Panel Secretary should inform all Panel Members by email
 - The party requesting urgent treatment should indicate a proposed timetable for urgency that is requested for the Amendment Proposal to follow (detailing which steps of the standard Amendment Procedure, as outlined in section 8 of the CUSC, they believe should/should not be followed and why) – please contact the Panel Secretary for assistance if required
- Following receipt of an Amendment Proposal with request for urgent treatment
 - The Panel Secretary should prepare for the CUSC Panel the following timetables detailing which steps of the standard Amendment Procedures are and are not to be followed (the timetable(s) may be the same or different to the timetable requested by the proposer):
 - the timetable which would be followed were urgency not to be recommended by the CUSC Panel
 - o a proposed urgent timetable which includes Working Group development (including a meeting timetable for the Working Group)
 - a proposed urgent timetable which proceeds straight to consultation by the Company

- Following a request that an Amendment Proposal be treated as urgent the Amendment Proposal, the urgent request and the proposed timetables should be forwarded without delay by email to the CUSC Panel
- Following forwarding of the above information by email the Panel Secretary should endeavour to contact all Panel Members by phone to advise that the urgent request has been received and the suggested next steps
- The Panel Secretary should then forward all material to the industry
- Included in the circulation of the material to the industry, the Panel Secretary should invite representation for a possible Working Group (responses to be received within a maximum of 5 Business Days following circulation of the material)

Consideration by the CUSC Panel of an urgent request

- The CUSC Panel should take account of the Authority urgency guidance, however note should be given to the fact that the guidelines are not exhaustive
- Due consideration should be given to the complexity, importance and urgency (in line with 8.16.4(b) of the CUSC) when setting the associated timetable
- Following a decision by, or on behalf of, the CUSC Panel with regards the urgency and timetable, the Panel Chairman (or Panel Secretary) should confirm the CUSC Panel recommendation in writing to the Authority, with the expectation that the Authority will provide a direction in writing
- The view on urgency and the recommended timetables are to be posted on the relevant Amendment Proposal section (linked to the urgency section) of the CUSC website, together with details as to whether the Authority has consented to the urgency recommendation and the terms of any direction received from the Authority

Development of an Urgent Amendment Proposal

- For the avoidance of doubt, an Urgent Amendment Proposal may deviate from all or part of the standard Amendment Procedures (as set out in the CUSC)
 - Where no Working Group is included in the directed timetable (received from the Authority), no opportunity for raising Working Group Alternative Amendments (WGAAs) exists
 - Where development by a Working Group is included in the directed timetable the usual procedures apply (unless otherwise directed) including the opportunity for raising WGAAs
- Following designation of an Amendment Proposal as urgent Panel Members and CUSC Parties shall take all reasonable steps to ensure the consideration, evaluation and (subject to Authority approval) implementation of the Urgent Amendment Proposal is undertaken as soon as practicable

 Following implementation of an Urgent Amendment Proposal the CUSC Panel may initiate a Standing Group to determine if any alternative amendment would better facilitate the Applicable CUSC Objectives

Summary of the Urgent Amendment Process

Points to note from urgency process:

- Any CUSC Party, BSC Party or the National Consumer Council can request that an Amendment Proposal be treated as urgent
- The CUSC Panel makes a recommendation on urgency, timetable and procedure to the Authority
- Where a request for urgency has been received from a proposer the Authority can direct the Amendment Proposal as urgent (or non-urgent), irrespective of whether or not the CUSC Panel agrees with this designation
- In the case of direction as urgent, the Authority may also direct those aspects of the standard Amendment Procedure that shall be followed and the associated timetable
- An Urgent Amendment Proposal can deviate from all or part of the standard Amendment Procedures
- Following designation of an Amendment Proposal as urgent Panel Members and CUSC Parties shall take all reasonable steps to ensure the consideration, evaluation and (subject to Authority approval) implementation of the Urgent Amendment Proposal is undertaken as soon as practicable
- Following implementation of an Urgent Amendment Proposal the CUSC Panel may initiate a Standing Group to determine if any alternative amendment would better facilitate the Applicable CUSC Objectives

Summary of Urgent CUSC Amendment Process

