

Stage 01: Initial Written Assessment

CAP181 Consequential changes related to Grid Code Amendment A/10 (Compliance)

CAP181 seeks to retain the established principles for limitation of liability that exist within the CUSC, which would be affected if Grid Code Amendment A/10 were implemented



National Grid recommends that CAP181 proceed directly to wider industry consultation



Medium Impact:
All CUSC Parties, Licence Exemptible Embedded Power Stations

What stage is this document in the process?

The following stages are the current BSC stages and will be amended to reflect the Code of Practice

- ▶ **01** Initial Written Assessment
- 02 Definition Procedure
- 03 Assessment Procedure
- 04 Report Phase

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XXX

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Any questions?

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About this document:

This document is a trial Initial Written Assessment (IWA) which has been produced by National Grid, in its role as code administrator, at the request of the CUSC Governance Standing Group. It has been written as though it had been produced at the beginning of the process for CAP181, i.e. prior to the first Panel meeting at which CAP181 were to be discussed.

This document is an Initial Written Assessment which will be presented by National Grid to the Amendments Panel on 26th February 2010. The Panel will consider the Proposer's recommendation, and agree whether this Proposal should proceed to consultation or be referred to a Working Group for development.

This document has a number of attachments as follows:

Attachment A: CAP181 Amendment Proposal

Attachment B: "Consequential draft changes to Distribution Code, DCUSA and CUSC to reflect introduction of new LEEMPS drafting as part of Grid Code Consultation A/10 (Compliance), document published by National Grid on 18th February 2010.

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1 Why Change?



What is Grid Code Amendment A/10: Compliance?

Grid Code Amendment A/10 seeks to formalise the generator compliance process within the Grid Code. The compliance process assesses adherence with requirements relating to technical capabilities, the provision of planning data to National Grid Electricity Transmission (NGET) and the submission of operational data. NGET uses the compliance process to ensure that it is able to plan and operate the National Electricity Transmission System in line with its Transmission Licence obligations. Currently, the process is set out in a number of Guidance Notes published by NGET on its website.

A/10 was developed by the Grid Code Compliance Working Group which was established to review and formalise the generator compliance processes, including a review of the compliance arrangements for Licence Exemptible Embedded Medium Power Stations (LEEMPS). The compliance processes for LEEMPS are currently undertaken by the Distribution Network Operator (DNO) to whose system the Power Station is connected. A/10 includes a transfer to NGET of some of the compliance responsibilities. The Working Group spent around two years exploring the issues and concluded by recommending that the Grid Code be amended to formalise a compliance process within the code.

Where is A/10 in the amendment process?

The A/10 Consultation document was issued on 1st February 2010, with a closing date of 1st April 2010. A/10 identified a series of consequential changes that would be required to the Distribution Connection and Use of System Agreement, the Distribution Code and the CUSC. Since its issue, the consultation period for A/10 has been extended to May 2010, to recognise the interaction with consultations for other industry codes.

Why does this affect the CUSC?

The CUSC sets out the limits of liability between CUSC Parties, including National Grid, which are restricted to physical damage to property of a CUSC Party, resulting from a breach of the CUSC. The liability is capped at £5m per incident or series of related incidents, except where the damage occurs between an onshore and offshore system, in which case the cap is set at £1m. This means that if a CUSC Party or Parties suffers financial loss due to physical damage to its equipment which results from another CUSC Party breaching the CUSC, the first CUSC Party(ies) can claim up to the limit of liability for the loss.

There are specific exclusions to the liability limits, which are fraudulent misrepresentation or death or personal injury arising from negligence of the liable CUSC Party.

If A/10 were implemented, it would have implications for the established limits of liability set out within the CUSC, as in most cases the owner of a LEEMPS would not have a contractual relationship with either National Grid or other CUSC Parties. This means that if any of these parties were to suffer financial loss caused by physical damage to equipment as a result of failing to comply with the relevant provisions of the Grid Code, there would be no recourse through a contractual relationship and a claim would need to be made through Tort Law. Such a claim could be for an unlimited amount which is contrary to the principle of limits of liability established in the CUSC.

Licence Exemptible Embedded Medium Power Stations (LEEMPS)

A LEEMPS is a 50 to sub 100MW Power Station, in England and Wales, which is connected to a distribution network. The Power Station owner would not be required to have a generation licence due to an exemption under the relevant Act. (The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001.

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2 Solution

How will CAP181 resolve the issues identified?

CAP181, in conjunction with parallel changes to the DCUSA, will require that CUSC Parties waive their rights to claim against the owners of LEEMPS in tort. Instead, claims will be routed through the relevant Distribution Network Operator with whom the CUSC Party has a contractual relationship through the CUSC. A new limit of liability, capped at £1m, will be established, in keeping with the existing limit set out within the DCUSA, and in line with the precedent established within CUSC for the Offshore regime.

In order to illustrate how A/10 and CAP181 would work in practice, in conjunction with changes to the DCUSA and Distribution Code, the proposer included a number of examples in an explanatory note to accompany the CAP181 Amendment Proposal, which is included as Attachment B to this IWA for ease of reference.

3 Legal Text

The Proposer has not provided legal text with the Amendment Proposal. However, it did publish "initial CUSC drafting" in its accompanying document published to the industry. This document is included as Attachment B to this IWA.

4 Proposed Progression

The Proposer recommends that CAP181 be issued direct to wider industry consultation with a suggested timetable for the amendment process as set out below. The Proposer also notes that there is an interaction with changes to be proposed to the Distribution Code and the DCUSA and that the consultation processes for all the affected codes should be run in parallel, where possible.

Activity	Deadline/Date	Notes
Agree Working Group terms of reference	17 th March 2010	Panel Members to approve by correspondence
First Working Group meeting	15 th April 2010	
Draft Working Group consultation document & circulate for comment	21 st April 2010	Circulate to Working Group members for comment
Deadline for comments on consultation document	5pm on 28 th April 2010	
Issue Working Group consultation document	29 th April 2010	2 week consultation
Deadline for responses to Working Group consultation	5pm on 17 th May 2010	
Second Working Group meeting	w/c 24 th May 2010	To discuss consultation responses and any WG Consultation Alternative Requests.
Draft Working Group report and circulate for comment	3 rd June 2010*	Circulate to Working Group members for comment
Deadline for comments on draft Working Group report	5pm on 10 th June 2010*	

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Activity	Deadline/Date	Notes
Issue Working Group report to National Grid	16 th June 2010*	
Publish Working Group report with Panel papers	17 th June 2010*	
Present Working Group report to Amendments Panel	25 th June 2010*	Working Group Chair to present

5 Costs & Impacts

Estimated Costs

Estimated code administration costs based on proposed timetable

Meeting costs	£XXX for 2 Working Group meetings
National Grid resource	20 man days, equating to £11,775

The costs above are estimates and assume:

- Two Working Group meetings held at National Grid's offices
- Working Group chairman and technical secretary provided by National Grid
- Resource costs are based on National Grid's "Charge-Out Rates", published in Schedule 3 of The Statement of Use of System Charges, on National Grid's website at: <http://www.nationalgrid.com/uk/Electricity/Charges/chargingstatementsapproval/index.htm>
- The published rates include overheads.

Indicative industry costs

None identified.

Impacts

Impact on CUSC Parties (including National Grid)

Contractual risks	CAP181 removes the risk to CUSC Parties of claims for unlimited amounts from affected parties through Tort Law.
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Impact on Code

Code section	Potential impact
Section 6: General Provisions	<p>Amendments required for:</p> <ul style="list-style-type: none"> • CUSC Parties to waive rights to claim directly against LEEMPS/LEEMDCCS owners. • Cap of £1m such that DNO will not be liable under the CUSC in respect of breaches of the Distribution Code by LEEMPS/LEEMDCCS owners for more than it can recover from such LEEMPS/LEEMDCCS owner under the DCUSA,
Section 11: interpretation and Definitions	New definitions required for DCUSA, Equivalent Waiver and LEEMPS/ LEEMDCCS.

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Impact on Core Industry Documents and other documents	
Document	Potential impact
Grid Code	CAP181 is consequential to Grid Code Amendment A/10
Distribution Connection and Use of System Agreement (DCUSA)	Corresponding changes are required to the DCUSA to reflect the waiver of rights to claim directly against National Grid

6 Implementation

The Proposer has not made any recommendation with regard to implementation of CAP181. National Grid considers it could be implemented 10 Business Days after an Authority decision.

7 The Case for Change

The Proposer believes that CAP181 will better facilitate the achievement of Applicable CUSC Objectives (a) and (b) and offers the following justification.

- (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this license;

With regard to objective (a), implementation of CAP181 (together with the consequential DCUSA modification) would better facilitate the obligation in Condition C7 of the Transmission Licence not to discriminate between persons or classes of person, should Grid Code proposal A/10 also be implemented. If the consequential CUSC amendments identified were not made, the liabilities faced by LEEMPS, DCCS and National Grid post-implementation of A/10 would be unlimited and not consistent with the established industry position.

- (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.

With regard to objective (b), implementation of CAP181 (together with the consequential DCUSA modification) would establish a level playing field with regard to the liabilities faced by all parties affected by the Grid Code Compliance process and would therefore facilitate competition between those parties. This is particularly the case with new entrants to the market who may see lack of clarity as a barrier to entry.

8 Recommendation

On the basis of the IWA, National Grid invites the Panel to:

- DETERMINE that CAP181 progress to wider industry consultation
- AGREE the proposed timetable for the amendment process

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